

State of Idaho

Local Emergency Planning Committee (LEPC) Handbook



Idaho Bureau of Hazardous Materials
4040 Guard Street Bldg. 600
Boise, ID 83705
(208) 422-5725 Office
(208) 422-4485 Fax
bhm@bds.state.id.us

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Parts of this handbook have been extracted from the State of Texas *A Local Emergency Planning Committee (LEPC) Handbook: A Primer for Local Planning for Hazardous Materials*, developed by the State Emergency Response Commission by the Texas Department of Public Safety-Division of Emergency Management.

Additionally, this handbook has been compiled from information obtained from Handbooks of the States of Arkansas, Kansas, Nebraska, Ohio, Missouri, Florida, Wyoming, Maine, North Dakota and Region 6 EPA.

The Idaho Bureau of Hazardous Materials is grateful the use of this information in the development of this handbook.

SECTION I: INTRODUCTION

A. History and Background

This handbook is designed for Local Emergency Planning Committees (LEPC's) in Idaho. The LEPC is a product of federal legislation passed after the disaster in Bhopal, India, where thousands of people died because of an accident involving hazardous chemicals. To prevent similar accidents in our communities, in 1986, Congress passed the Emergency Planning and Community Right-to-Know Act (EPCRA), also known as SARA Title III. (See Appendix A) EPCRA establishes requirements for businesses, and for federal, state and local governments regarding emergency planning and community right to know reporting for hazardous chemicals. This helped increase awareness about the presence of chemicals in their communities and releases of these chemicals into the environment. The State of Idaho also enacted the Hazardous Substance Emergency Response Act (Title 39, Chapter 71 Idaho Code). (See Appendix B) As a result, states and communities, working with industry are better able to protect public health and the environment. Congress enacted the EPCRA regulations to benefit communities. Two main goals of this law are to:

1. Provide a basis for each community to develop and tailor a chemical emergency planning and response program to suit their needs, (in Idaho LEPC's are encouraged to perform all hazard planning), and
2. Provide the public with a right-to-know attitude to identify the hazardous materials in the community.

Why this handbook?

Federal, state and local agencies, along with industry are cooperating with local communities to make EPCRA and related laws effective. However, the ultimate success rests with the LEPC's. They are the link among citizens, industry, and the government. Because LEPC's are most familiar with the hazards in their communities, and because local citizens are the first responders for emergencies, LEPC's are in the best position to assist local governments in developing plans to respond to emergencies in their jurisdictions. This LEPC handbook, while not a regulation, is a **guide** for LEPC's in their relationship to state and federal agencies. The complete EPCRA should be used by the LEPC when making decisions regarding hazardous materials. The Federal Register and any other appropriate document can be used to keep informed of any changes that may be made in the future.

SECTION II: LOCAL EMERGENCY PLANNING COMMITTEES (LEPC's)

A. General

The role of LEPC's is to form a partnership with state and local government, responders, and industry as an enhancement for mitigation, preparedness, response, recovery, planning, exercising and training. Local government is responsible for planning and response within their jurisdiction. This includes ensuring the local hazard analysis adequately addresses any possible incidents that may occur in your jurisdiction; incorporating planning for hazmat incidents into the local emergency operations plan; assessing capabilities and developing response capability using local resources, mutual aid and contractors; training responders; and exercising the plan.

It is necessary to include all the players to ensure the plan is compatible. Every regulated facility is responsible for identifying a facility emergency coordinator; reporting hazmat inventories annually on a Tier II to the LEPC, local fire department, and Bureau of Hazardous Materials; providing material safety data sheets (MSDS) or a list of hazardous chemicals; allowing local fire departments to conduct on-site inspections of hazmat facilities; and providing to the EPA and the Bureau of Hazardous Materials an annual report (TRI) of chemicals released.

LEPC's are crucial to local planning and community right-to-know programs. The membership comes from the local area and is familiar with factors that affect public safety, the environment, and the economy of the community. This expertise is essential as the LEPC is involved in the writing of the local emergency operations plan.

In addition to its formal duties, the LEPC can serve as a focal point in the community for information and discussion about emergency planning, training and exercising. Citizens may expect the LEPC to answer questions about hazards and risk management actions.

Members of the LEPC represent the various organizations, agencies, departments, facilities and other groups within the jurisdiction. Each member must realize that they represent their organization on the LEPC and that they are responsible for coordinating information and activities from the LEPC to their organization and for providing accurate feedback from their organization back to the LEPC. The LEPC has many responsibilities, mandates, and deadlines. The membership can organize to handle these various tasks by utilizing individual efforts, sub-committees, or contracted assistance.

B. Primary LEPC Responsibilities

As mentioned in Section 1, the Emergency Planning and Community Right-to-Know Act (EPCRA) establishes the LEPC as a forum at the local level for discussions and a focus for action in matters pertaining to hazardous materials planning. In Idaho we encourage all-hazard planning. LEPC's also help to provide local governments and the public with information about possible hazards in their communities.

The major *legal* responsibilities cited in EPCRA are listed below:

- ❑ Shall review local emergency management plans once a year, or more frequently as circumstances change in the community or as any facility may require.
- ❑ Shall make available each MSDS, or TIER II Report, inventory form, and follow-up emergency notice to the general public, during normal working hours at a location designated by the LEPC.
- ❑ Shall establish procedures for receiving and processing requests from the public for information including Tier II information.
- ❑ Shall receive from each subject facility the name of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.
- ❑ Shall be informed by the community emergency coordinator of hazardous chemical releases reported by owners or operators of covered facilities.
- ❑ Shall be given follow-up emergency information as soon as practical after a release, which requires the owner/operator to submit a notice.
- ❑ Shall receive from the owner or operator of any facility a MSDS for each such chemical (upon request of the LEPC or fire department), or a list of such chemicals as described.
- ❑ Shall, upon request by any person, make available an MSDS to that person.
- ❑ Shall receive from the owner or operator of each facility an emergency and hazardous chemical inventory form.
- ❑ Shall respond to a request for Tier II information no later than 45 days after the date of receipt of the request.
- ❑ May commence a civil action against an owner or operator of a facility for failure to provide information, or for failure to submit Tier II information.

C. Additional LEPC Responsibilities

- ❑ Shall appoint a Chairperson, and Information Coordinator, and have rules for:
 - Establishing authority of the LEPC
 - Immunity for LEPC members
 - Notifying the Bureau of Hazardous Materials of nominations for changes in the LEPC membership. The LEPC shall also notify the BHM of address changes for LEPC Chairpersons.
- ❑ Shall evaluate the need for resources necessary to develop, implement, and exercise the emergency operations plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.
- ❑ Shall annually publish a notice in local newspapers that the emergency management response plan, MSDS, follow-up release notifications, and inventory forms have been submitted.

D. LEPC Structure

1. Membership

As prescribed under Section 301 of EPCRA, as a minimum the LEPC shall include representatives from the following organizations:

- ✓ Elected state or local officials
- ✓ Emergency Medical Personnel
- ✓ Fire Departments
- ✓ Health Officials
- ✓ Emergency Management
- ✓ Law Enforcement
- ✓ Community Groups
- ✓ Local Environmental Groups
- ✓ Broadcast and/or print media
- ✓ Hospital personnel
- ✓ Owners and operators of covered facilities

A single member may represent more than one of the above groups or organizations. Likewise, more than one member may represent a group. Ideally, members should be interested in emergency programs and community right-to-know activities. If you are not able to get a representative from each of these organizations, do not let that stop you from having meetings. You can provide them with a copy of the minutes, the meeting announcements and agendas, and stay in contact with them.

2. Appointments

The LEPC must appoint a Chairperson and may appoint a Vice-Chairperson and other officers. A term of office should be set, but may vary in length according to the needs of each LEPC. The Chairperson can be any LEPC member. Some LEPC's have chosen political leaders; others have selected chairpersons from Emergency Management, environmental groups, industry or civic organizations. Important factors to consider are the availability, management skills, commitment to the program, and respect from other LEPC members and the community. (See Appendix C for a sample appointment letter)

EPCRA requires the LEPC to appoint an Information Coordinator. The Information Coordinator's job is to process requests from the Public for information under Section 324, including Tier II information under Section 312. The Information Coordinator can also assist other committee members, and may have another position in the LEPC as well.

Positions not required by law, but which have proved useful are: Vice-Chairperson, Secretary/Treasurer, and Chairpersons of standing committees.

Involving individuals who have expertise in areas of LEPC concern as at large members can be very effective. Although not official members, they can expand the knowledge base significantly. These individuals need not be carried on official LEPC membership rosters.

The Bureau of Hazardous Materials is responsible for maintaining a listing of LEPC memberships. The BHM provides this information to the public, industry, federal agencies, and other state agencies and states. It is important that your LEPC membership is kept current and the BHM is kept informed of all membership changes.

3. Subcommittees

Dividing the work among subcommittees can facilitate planning and data management. Subcommittees allow members to specialize and help the process to move forward more quickly, because the LEPC can work on several projects at one time.

The appointment of a subcommittee chairperson may ensure that work progresses efficiently. The number and type of subcommittees that an LEPC creates should depend solely on the needs of the LEPC and its members. Subcommittees may be formed and disbanded as needed to accomplish initial and on-going tasks. Subcommittee membership does not need to be limited to LEPC members. The LEPC is encouraged to invite persons from various sectors of the jurisdiction for additional input and enhanced expertise.

In determining the type and number of subcommittees to establish, the LEPC should examine a number of factors regarding current LEPC status and future expectations and goals. For example, LEPC members should try to answer the following questions:

- What are the goals of the LEPC this year?
- Do certain topics require much discussion/research?
- Is it necessary to establish subcommittees?
- Are there enough people, expertise, and leadership among LEPC members to maintain subcommittees?

The LEPC might appoint Subcommittees for the following:

- Gathering and reviewing existing community and facility emergency plans annually.
- Coordinating emergency response capabilities of LEPC member organizations.
- Checking emergency response equipment in the community.
- Identifying financial resources.
- Coordinating with other LEPC's, the Bureau of Hazardous Materials, and the Bureau of Disaster Services Area Field Officers.
- Conducting a hazard analysis.
- Managing and providing information for citizens.
- Providing information to facilities.

- Promoting public awareness of EPCRA, community chemical hazards, and emergency response expected from the public.

Some subcommittees your LEPC might designate are:

- A Planning Subcommittee, whose responsibilities may include:
 - Developing and assisting in the review of the Emergency Operations Plan.
 - Reviewing the site-specific Hazardous Materials Response Plans submitted for each facility with Extremely Hazardous Substances (EHS's).
 - Reviewing and updating the Emergency Operations Plan yearly.
- A Public Information Subcommittee, whose responsibilities may include:
 - Writing and publishing public notices.
 - Establishing an information retrieval system.
 - Performing citizen/neighborhood outreach to inform them of plans and other valuable information.
- A Training and Exercising Subcommittee, whose responsibilities may include:
 - Conducting a training needs assessment.
 - Requesting training grants available through the Bureau of Hazardous Materials and other sources to provide needed training.
 - Coordinating training programs.
 - Establishing an exercise schedule.

Once an assessment has been done by the LEPC and basic subcommittees have been formed, the LEPC may want to create additional subcommittees. Some examples are:

- An Executive Subcommittee who may do the following:
 - Appoint chairpersons for each subcommittee.
 - Develop long-term goals for your LEPC.
 - Tend to needs of the LEPC members.
 - Review LEPC membership terms and solicit volunteers to fill vacancies.
 - Be familiar with federal, state and local laws that impact the LEPC.
 - Develop a work plan with timetables for the other subcommittees.
- A Resource Development Subcommittee, whose responsibility may include:
 - Researching the resources in the community for emergency response.
 - Identifying alternative resources that the community may use in time of emergency or disaster.
 - Updating the local resource inventory.
 - Identifying other volunteer or in-kind assistance contributions (private sources such as business, industry, non-profit agencies etc.)
- An Emergency Response Subcommittee whose responsibilities may include:

- Developing emergency response procedures for local government personnel that may be utilized in emergency response.
- Establishing local Incident Command System procedures to strengthen and coordinate local government emergency response.
- A Finance Subcommittee, whose responsibilities may include:
 - Management of the LEPC budget.
 - Examining and recommending the use of funds.
- Business/Industry Outreach subcommittee, whose responsibilities may include:
 - Developing initiatives that will encourage active participation by the commercial businesses and industrial facilities in your community.

Reports on subcommittee activities can be made at the regularly scheduled LEPC meetings.

E. By-Laws

Rules or by-laws for the LEPC should be established as required in EPCRA Section 301. The by-laws may include the following provisions:

- Public notification of committee activities.
- Public meetings to discuss the emergency plan.
- Public comment and response to these comments
- Distribution of emergency plan.
- Election of officers.

(See Appendix D for a sample of By-Laws)

F. Meetings

The frequency of LEPC meetings is not mandated. In order to keep the LEPC functioning effectively, regularly scheduled meetings that address local issues and work toward progress on key concerns are important. Circumstances change frequently, along with key phone numbers and contacts. Regular meetings also offer the opportunity for the LEPC participants to become familiar with each other and their roles in the community. Some LEPC's have their meetings on the same day each month so schedules can be planned in advance. Some have their meetings during the lunch hour and the involved agencies and industry take turns providing lunch during the meeting.

LEPC meetings are open to the State Open Meetings Act. They should follow an organized format such as Robert's Rules, or some other guidelines. A well-planned agenda is an important tool for conducting effective meetings. The agenda should identify specific issues to be discussed as well as guest speakers. If needed, each agenda item may be assigned a time limit. The key is to follow the agenda and keep the time limits as they are set.

Each committee member should be sent, if possible, a copy of the agenda one to two weeks before the meeting. With this you can also send any pertinent information to allow the participants to prepare for the meeting. Again, the LEPC Chairpersons should determine how requirements under State Meeting rules apply to LEPC meetings.

Posting of meeting dates, times and locations, oral public comments, and recording of meeting minutes may all be subject to State Rules. LEPC's are encouraged to seek topics, speakers, invitations from facilities and response organizations and other opportunities to expand knowledge from a wide variety of sources. Each meeting should have a record keeper that will produce minutes, and a record of all actions. A copy of these minutes should be provided to all the members and the Bureau of Hazardous Materials.

Although LEPC's should attempt to have regularly scheduled meetings, it may be beneficial to move meetings to different locations within the county. This will allow participants that may not be able to attend at one place and time the opportunity to attend at another. (See Appendix E for a Guide For Conducting Effective Meetings)

G. Administration

Most LEPC's are challenged with having to administer a program with little or no budget, and no office to work from. Despite this, they are required by law to respond to public inquiries about hazardous materials in their communities within 45 days. Keeping efficient records and using workspace provided by a LEPC member organization can still accomplish this. Some LEPC's co-locate with the emergency management program or a local fire or law enforcement department. This can be a benefit to each organization involved.

1. Maintenance of Records

At a minimum, LEPC's should maintain the following records:

- ✓ Copy of Local Emergency Operations Plans and their annexes.
- ✓ Material Safety Data Sheets (MSDS) or information on where to obtain them.
- ✓ Initial and follow-up hazardous chemical spill reports.
- ✓ Records of LEPC and committee meetings (minutes).
- ✓ LEPC membership list.
- ✓ Tier II reports for covered facilities.

2. Information Resources

EPCRA has existed for over ten years. During this period the resources available to LEPC's have increased greatly. Today, assistance is available from all levels of government and from industry. The good news is, except for some computer software, most of this information is free to LEPC's.

H. Public Inquiries and Awareness

EPCRA requires LEPC's to establish procedures for receiving and processing requests from the public for information under Section 312. EPCRA is based on the principal that the more known about hazardous chemicals in the community, the better prepared the community will be to manage these potential hazards and to improve public safety and health.

I. Funding LEPC Activities

When Congress passes EPCRA, it did not provide funding for LEPC's. On the average, annual LEPC budgets range from \$0 to \$3,000.00.

The cost of implementing EPCRA at the LEPC level will vary. Communities have found a wide range of solutions to the funding. Some examples are:

1. Volunteers and donated services
Much of the work of the LEPC can be accomplished with little or no funding. Committee members often donate time and other resources. Local businesses and agencies have also contributed their services. Some LEPC's have found that volunteers can be a great source of manpower.

2. Grants

- a. General

There are limited state and federal funds available to the LEPC's through grant programs. Authorized by the 1990 Hazardous Materials Transportation Uniform Safety Act (HMTUSA), the Hazardous Materials Emergency Preparedness (HMEP) Program provides funding nationally for hazardous materials emergency response planning and training at the local level. The U.S. Department of Transportation (DOT) administers this program. The state share of this federal grant is administered by the Bureau of Hazardous Materials.

- b. Other Federal Assistance

The Federal Emergency Management Agency (FEMA) also provides funds for local emergency management through its State and Local Assistance (SLA) Program. The Bureau of Disaster Services administers this program in Idaho.

3. Supplemental Environmental Projects (SEP's)

Once EPA has taken an action for not submitting a TIER II Chemical Inventory Report (Section 312) or emergency release notification (CERCLA Section 103/EPCRA Section 312), there is an alternative to simply imposing fines on the non-complying facility. Current federal enforcement policy authorizes consideration for mitigating the fines imposed if the offending facility agrees to perform a supplemental environmental project

(SEP). Enforcement actions provide an opportunity for the facility to become actively involved in the local planning and response process and to assist the LEPC's in their activities. These agreements are an appropriate way to enforce EPCRA, since the SEP's can be arranged to aid in its implementation. Through the use of SEP's, facilities have:

- ❖ Provided emergency or computer equipment to the LEPC
- ❖ Provided training to local emergency or planning personnel
- ❖ Become active members in the LEPC
- ❖ Participated in training exercises
- ❖ Provided funding for public outreach

4. Industry Donations

Some of the most active funding programs in the country for LEPC's are through industries that are active members of the LEPC. Industry can provide not only funding for special projects, but equipment, and expertise.

There is no question that funds provided to the LEPC can be used for different purposes such as planning, training and exercising. The Bureau of Hazardous Materials is committed to supporting LEPC's by providing funding obtained through EPA enforcement actions, Title III grant, DOT HMEP Planning & Training grants and other funding sources that may be available in the future.

J. Maintain a Healthy LEPC

Research shows most healthy LEPC's:

- ❑ Have clearly defined goals.
- ❑ Have members that know what their "job" is in the LEPC.
- ❑ Have members with responsibilities and interests from broad-based community representation (not dominated by one segment).
- ❑ Have members that stay committed and interested because they:
 - feel useful and believe they are helping the community
 - have been given tasks according to their interests and expertise
 - have been given challenging tasks
 - are recognized for their contributions
 - have a chance to develop their own skills
- ❑ Have members that understand their purpose and value and share this with their superiors to gain support.
- ❑ Have working relationships with the state level agencies responsible for the program, and with their peers in other counties.
- ❑ Have meetings scheduled at regular, convenient times.
- ❑ Have meetings that adhere to the agenda and are concerned with common interests.
- ❑ Have a strong leadership and dedicated members.

SECTION III: REPORTING REQUIREMENTS FOR FACILITIES WITH HAZARDOUS MATERIALS

A. What Hazardous Materials are Subject to Regulation?

There are five groups of chemicals subject to reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Risk Management Plans (RMP's) under the Clean Air Act of 1990 (112R).

Some chemicals appear in several of these lists. These lists are:

- ✓ Extremely Hazardous Substances (EHS's)
- ✓ Hazardous Substances
- ✓ Hazardous Chemicals
- ✓ Toxic Chemicals
- ✓ List of Toxics & Flammables

B. Hazard Chemical Inventory Reporting

1. General

There are fixed facilities in almost every county, which use, produce and/or store hazardous chemicals. LEPC's need to be aware of all the facilities in their district, and especially the ones handling Extremely Hazardous Substances (EHS's). These facilities may be privately or government owned and they all may be subject to some provisions of the law. Federal facilities also must comply with the provisions of the EPCRA.

2. Hazardous Substance Inventory Reports

A. Emergency Preparedness Phase

- (1) Identification of facilities subject to Special Planning Requirements:
 - ❖ Emergency planning letter submitted to the BHM and LEPC when the facility has sufficient EHS's to warrant reporting.
 - ❖ All facilities must submit information about the types and amounts of chemicals present if requested by the fire chief or the LEPC.
- (2) Annual Chemical Inventory Reporting
 - ❖ Covered facilities must submit Tier II forms to the LEPC, local fire departments, and the Bureau of Hazardous Materials by March 1st of each year.
 - ❖ If requested, covered facilities must submit MSDS's to the above agencies.
- (3) Annual Toxic Chemical Release Reporting
 - ❖ Covered facilities must submit written Toxic Chemical Release Inventory Form R (TRI) by July 1st of each year to EPA Headquarters and to the BHM.

B. Emergency Response Phase

Covered facilities or transporters must make immediate notification to an emergency 24-hour phone number designated by each LEPC, the BHM, and the National Response Center (NRC). In Idaho, State communications must be called at 1-800-632-8000 or (208) 846-7610 to notify the state. Written follow-ups must be filed with the BHM and the LEPC.

C. Risk Management Program (Clean Air Act Section 112 R)

Important provisions in the amendments of the Clean Air Act advance the process of risk management planning. The amendments include specific provisions addressing accidental releases of hazardous chemicals.

On June 20, 1996, EPA promulgated rules and guidance for chemical accident prevention. These rules include requirements for sources (facilities) to develop and implement risk management programs that incorporate three elements: a hazard assessment, a prevention program, and an emergency response program. These programs are summarized in a risk management plan (RMP), which was to be submitted to EPA by June 21, 1996.

It is important for LEPC's to be familiar with these federal rules since they will clearly be affected by them. As a minimum, LEPC's can expect to get involved in the following areas of the RMP rule:

- ❑ Emergency Response Program of the final rule, which requires the owner or operator of a covered facility to "provide the name and telephone of the local agency which the facility emergency response plan is coordinated." Facilities may have approached LEPC's with requests for the mentioned coordination. LEPC's should familiarize themselves with those emergency plans.
- ❑ LEPC's should make a point of reviewing at least the executive summary of all the risk management plans submitted by facilities within their LEPC planning areas. Not only will you find a short summary of the entire facility plan, but you will read about future changes planned to improve safety.
- ❑ LEPC's should review the hazard assessments provided by the facilities. The vulnerable zones may add significantly to the planning efforts of the LEPC. (Because of security concerns, these assessments are not included on the Internet. LEPC's should discuss these directly with the facility.)

SECTION IV: EMERGENCY OPERATIONS PLAN DEVELOPMENT

A. Minimum Requirements for the Plan

1. State Law

Under the federal EPCRA law, each LEPC was to develop an emergency response plan and review it at least annually thereafter. Section 312 of EPCRA states that nothing in EPCRA will preempt any state or local law. Therefore, existing State Law governs local emergency management planning as long as it meets the requirements of EPCRA. Under State guidelines, LEPC's develop emergency plans to meet the response and recovery needs during emergencies involving natural hazards, national security, and technological and man-made hazards. (All Hazard Planning)

2. Federal Requirements

The LEPC planning envisioned by EPA was intended to complement the existing planning that state law already required instead of creating a separate process. In most situations, the LEPC did not develop a separate plan, but carried out the emergency planning requirements related to hazardous materials by adding a hazardous materials annex. In this way, the LEPC is an important resource useful to all local responders.

EPCRA requires that each **hazardous materials** emergency response plan does the following:

- identify facilities and transportation routes of extremely hazardous substances;
- describe emergency response procedures, on-site and off-site;
- designate a community emergency coordinator and facility coordinator(s) to implement the plan;
- outline emergency notification procedures;
- describe methods for determining the occurrence of a release and the probable affected area and population;
- describe community and industry emergency equipment and facilities, and the identity of persons responsible for them;
- outline evacuation plans;
- describe a training program for emergency response personnel (including schedules);
- present methods and schedules for exercising emergency medical personnel, fire services, and law enforcement agencies.

B. Hazard Analysis

As you will notice while reading the criteria for developing a hazardous materials annex, some of your key tasks will be to identify facilities containing extremely hazardous substances (EHS's) or to identify transportation routes likely to be used for the transportation of these substances. A hazard analysis will help identify these as well as

the other hazards in your community. Planners should try to answer the following questions:

- What are the major hazards in our community?
- How can we determine the area or population likely to be affected by these hazards?
- What emergency response resources does our community need? (Include personnel and equipment.)
- What kind of training is needed?
- How can we help prevent (mitigate) these hazards?

The hazard analysis process can assist local emergency planning committees (LEPC's) in answering these and other important planning questions.

SECTION V: EXERCISING THE PLAN AND EXERCISE EVALUATION

EPCRA requires each plan to “present methods and schedules for exercising emergency response plans to emergency personnel, fire service, and law enforcement agencies”. Each LEPC, therefore, must develop and conduct an exercise to test and validate the various plan sections that relate to the local agencies, departments and organizations within the district to satisfy exercise requirements.

The LEPC must decide what objectives to test, select the type of exercise, the basic scenario, the participants, and when to conduct the exercise. The LEPC should appoint an Exercise Design Team to actually develop the exercise, including the scenario, messages, incident site, and control measures. The Team should consist of individuals experienced with the functions of the organization, agencies, and facilities involved in the exercise. One member should be designated as team chief or leader and be responsible for submitting appropriate progress reports to the LEPC.

The team may want to meet initially with the Exercise Officer of the Bureau of Disaster Services to seek guidance and to ensure that exercise directives and procedures are understood. Obviously, the local Emergency Management Office will also have a major impact and input into this process. The LEPC should provide the BHM with notice of the exercise if it involves hazardous materials. This permits the state to participate as appropriate. There are various courses, exercise guidance, and evaluation documents available to assist the LEPC with exercises. These can be provided by your BDS Area Field Officer. The primary federal guidance documents for hazardous materials exercises that can be obtained are:

- ❖ FEMA’s Cher-Cap Hazardous Materials Exercise Evaluation manual
- ❖ NRT-2 Developing a Hazardous Materials Exercise Program

A. Exercise Development Suggestions

Utilize the training and experience of all representatives of the LEPC and of others in the community in the planning of the exercise.

The LEPC should start planning many months prior to the expected date of the exercise to determine the type, scale and objectives of the exercise.

Appoint an Exercise Design Team and provide them guidance on what type of exercise the LEPC would like to conduct. Have the Exercise Design Team provide the LEPC briefings and identify any needs or requirements the LEPC should be made aware of. NOTE: The team members should not participate directly in the exercise as players, but could serve as Controllers during the exercise.

Arrange for a meeting between the team and the BDS Area Field Officer for guidance to insure the exercise meets all applicable state planning and exercising requirements.

Insure that all participating departments, agencies, and organizations:

- ✓ are aware of the exercise;
- ✓ wish to participate
- ✓ receive general information on the exercise
- ✓ know what will be expected of them during the exercise.

The LEPC may wish to schedule pre-exercise training and/or drills to assist individuals or organizations in preparing for the exercise.

B. Exercise Design Course, Review of Exercises, Credit

The Bureau of Disaster Services periodically teaches a FEMA certified course in designing, conducting, and evaluating exercises. Interested individuals can contact their AFO for course information, dates and applications.

The AFO can also assist in getting evaluators for exercises conducted in communities. However, the LEPC should provide sufficient evaluators who are qualified by training and/or experience to conduct an evaluation of the objectives they will be assigned to review.

LEPC's may request exercise credit for their local emergency management office for an actual incident that occurred in, or affected the district. This credit, if granted, may be used to satisfy the annual exercise requirements for emergency management offices.

When the LEPC conducts a full-scale exercise, there should be an announced critique. This critique should be scheduled by the LEPC, and could be done in conjunction with a LEPC meeting, or it could be scheduled separately.

Critiques and debriefings are important to the participants as well as the LEPC. The participants want to know what the evaluator observed and the recommendations they have. Debriefings should be conducted immediately after the exercise, usually at the site while all the participants are still present.

Critiques bring the participants together and allow them to listen to the comments of the evaluators as they review the exercise. A public critique is required after each full-scale exercise. Finally, the LEPC should assemble the various heads of the participating agencies, departments, groups or organizations to discuss the exercise. They should discuss how the exercise actions met or conflicted with procedures outlined in the plan. They should identify which plan changes, if any, need to be made. Any changes recommended will be brought to the LEPC and should be reviewed and possibly included in the next plan revision.

SECTION VI: HAZMAT RESPONSE OPTIONS

A. Local Government Response to Hazardous Substance Incidents

1. General

Both Federal and state statutes indicate the person responsible for the spill (spiller) is responsible for the clean up. Local government must be prepared to implement appropriate notification and response actions in order to save lives and property during a HAZMAT incident. In Idaho you call State Communications at 1-800-632-8000 or (208) 846-7610 to make your notifications and receive advice and assistance.

2. Local Response

a. Firefighters and HazMat Teams

Most jurisdictions assign the responsibility of hazardous substance spills response to the local or district fire department. Proper training and equipment necessary for hazardous substance response is costly in manpower and dollars, so capabilities vary considerably throughout the state. First responders should have the training to recognize immediately whether their team has the proper training and equipment to handle the incident. Some fire departments in Idaho have specially trained personnel that have the capability to respond to a hazardous materials incident in their jurisdiction. If assistance is needed in the form of manpower, equipment, or just advice it can be obtained by calling State Communications at 1-800-632-8000 or (208) 846-7610. (See Appendix F)

b. Local Emergency Response Authority (LERA)

The Hazardous Substance Emergency Response Act requires cities and counties to designate a Local Emergency Response Authority (LERA) for hazardous materials incidents that occur within their jurisdictions. Cities and counties are encouraged to appoint a response authority whose members are trained in hazardous substance incident response. If the jurisdiction does not designate a LERA, Idaho State Police fills the function by default. This does not relieve the local jurisdiction of the liabilities. (See Appendix B Title 39 Sections 39-7105 & 39-7106)

Idaho State Police can provide training for LERA's at no cost, and can assist LERA's in the completion of cost recovery packets if needed.

c. Incident Command System (ICS)

Under 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response, OSHA requires the use of the Incident Command System (ICS) by private organizations responding to hazardous substance spills. EPA's 40 CFR 311 refers response actions and related worker safety and health for state and local employees to the OSHA citation. The designated, or local senior emergency response official on-scene is usually the

Incident Commander (IC). State and Federal On Scene Coordinators (OSC) are expected to work under the Incident Command System (ICS) at all incidents, and are considered to be resources for the local Incident Commander.

d. HAZMAT Contractors

Idaho Department of Environmental Quality maintains a list of companies that are providers of various HAZMAT services within the state. Although they do not license, certify recommend or otherwise regulate these vendors, the state can provide a list of contractors to the responsible party “spiller” for site clean up. If the spiller does not act promptly, the state can request a contractor to perform the clean up and bill the spiller for the costs.

B. Reimbursement to Local Governments for Emergency Response to Hazardous Substance Incidents. (Cost Recovery)

All hazardous materials incident expenses, including staff time, incurred by each responding agency should be carefully documented by those agencies and submitted to the Bureau of Hazardous Materials using the cost recovery packet provided by BHM. All cost recovery claims must be submitted to the Bureau of Hazardous Materials within 60 days of the termination of the incident. (See Appendix G for a sample Cost Recovery Packet.)

SECTION VII: LEPC TRAINING AND EDUCATION PROGRAMS

A. General

EPCRA requires that each plan “describe a training program for emergency response personnel (including schedules)”. These programs should be made available for all emergency response, management, and facility personnel. Additionally, the LEPC should train its own members in their respective areas of responsibility. It should also work together with the Community Emergency Management Office in training such groups as the EOC staff, officials, and others regarding plans, exercises, and other activities.

B. Training Program Considerations

The LEPC should:

- ✓ determine what training needs exist
- ✓ identify personnel to be trained
- ✓ obtain funding
- ✓ determine where and when training will be held

The LEPC should also consider the implementation of a training and education program for the jurisdiction that includes training already scheduled and conducted by the Emergency Management Office, the various first response agencies and organizations, as well as other training activities relating to mitigation, preparedness, response and recovery.

The LEPC should coordinate with the various district associations (Fire, EMS, Law etc.) to combine training efforts. Combining training sessions has many benefits, such as:

- ✓ attracting more participants
- ✓ cost savings
- ✓ training more people with fewer instructor, and most importantly,
- ✓ the students get to know each other, and the roles and responsibilities of their agencies.

C. Organization for Training

Each LEPC will have to determine how the jurisdiction can best organize, set-up, and conduct a productive training and education program. Each area is different, and each LEPC should develop a program that benefits its people in accordance with State and Federal training standards. One way a LEPC might approach establishing a training and education program is to appoint a Training Sub-Committee. This group could contain representatives of Fire, Law Enforcement, Facility, EMS, and Emergency Management organizations. Their tasks could be to:

- ✓ identify what training needs exist

- ✓ identify what training is currently available
- ✓ identify the training goals of the various organizations.

This information could then be presented to the entire LEPC at the regularly scheduled meetings.

D. Continued Training and Education Programs

The various training and education programs conducted or arranged by the LEPC for Emergency Management and LEPC participants and officials should be considered an on-going program based on the assessment of the needs.

The Training and Education Sub-Committee should carefully review training already provided, assess current and future needs and develop their programs accordingly

The Training Sub-Committee should be familiar with 29 CFR 1910.120, which requires initial, management and supervisor, emergency response, and refresher training.

Summary

Training of all personnel is important, but the training of individuals that must respond to a HAZMAT incident is critical. This is not only because of concern for the health and welfare of the responder, but for the community as well. All emergency responders must be properly trained and equipped if they are to successfully handle incidents. The LEPC has a responsibility to coordinate, support, and assist the various agencies, departments, organizations, and groups with their training programs.

TITLE 42 - THE PUBLIC HEALTH AND WELFARE**CHAPTER 116 - EMERGENCY PLANNING AND COMMUNITY
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SUBCHAPTER I - EMERGENCY PLANNING AND NOTIFICATION

Sec. 11001. Establishment of State commissions, planning districts, and local committees

- (a) Establishment of State emergency response commissions
Not later than six months after October 17, 1986, the Governor of each State shall appoint a State emergency response commission. The Governor may designate as the State emergency response commission one or more existing emergency response organizations that are State-sponsored or appointed. The Governor shall, to the extent practicable, appoint persons to the State emergency response commission who have technical expertise in the emergency response field. The State emergency response commission shall appoint local emergency planning committees under subsection (c) of this section and shall supervise and coordinate the activities of such committees. The State emergency response commission shall establish procedures for receiving and processing requests from the public for information under section [11044](#) of this title, including tier II information under section [11022](#) of this title. Such procedures shall include the designation of an official to serve as coordinator for information. If the Governor of any State does not designate a State emergency response commission within such period, the Governor shall operate as the State emergency response commission until the Governor makes such designation.
- (b) Establishment of emergency planning districts
Not later than nine months after October 17, 1986, the State emergency response commission shall designate emergency planning districts in order to facilitate preparation and implementation of emergency plans. Where appropriate, the State emergency response commission may designate existing political subdivisions or multi-jurisdictional planning organizations as such districts. In emergency planning areas that involve more than one State, the State emergency response commissions of all potentially affected States may designate emergency planning districts and local emergency planning committees by agreement. In making such designation, the State emergency response commission shall indicate which facilities subject to the requirements of this subchapter are within such emergency planning district.
- (c) Establishment of local emergency planning committees
Not later than 30 days after designation of emergency planning districts or 10 months after October 17, 1986, whichever is earlier, the State emergency response commission shall appoint members of a local emergency planning committee for each emergency planning district. Each committee shall include, at a minimum, representatives from each of the following groups or organizations: elected State and local officials; law enforcement, civil defense, firefighting, first aid, health, local environmental, hospital, and transportation personnel; broadcast and print media; community groups; and owners and operators of facilities subject to the requirements of this subchapter. Such committee shall appoint a chairperson and shall establish rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan. The local emergency planning committee shall establish procedures for receiving and processing requests from the public for information under section [11044](#) of this title, including tier II information under section [11022](#) of this title. Such procedures shall include the designation of an official to serve as coordinator for information.
- (d) Revisions
A State emergency response commission may revise its designations and appointments under subsections (b)

and (c) of this section as it deems appropriate. Interested persons may petition the State emergency response commission to modify the membership of a local emergency planning committee.

Sec. 11002. Substances and facilities covered and notification

- (a) Substances covered
 - (1) In general
A substance is subject to the requirements of this subchapter if the substance is on the list published under paragraph (2).
 - (2) List of extremely hazardous substances
Within 30 days after October 17, 1986, the Administrator shall publish a list of extremely hazardous substances. The list shall be the same as the list of substances published in November 1985 by the Administrator in Appendix A of the "Chemical Emergency Preparedness Program Interim Guidance".
 - (3) Thresholds
 - (A) At the time the list referred to in paragraph (2) is published the Administrator shall -
 - (i) publish an interim final regulation establishing a threshold planning quantity for each substance on the list, taking into account the criteria described in paragraph (4), and
 - (ii) initiate a rulemaking in order to publish final regulations establishing a threshold planning quantity for each substance on the list.
 - (B) The threshold planning quantities may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.
 - (C) If the Administrator fails to publish an interim final regulation establishing a threshold planning quantity for a substance within 30 days after October 17, 1986, the threshold planning quantity for the substance shall be 2 pounds until such time as the Administrator publishes regulations establishing a threshold for the substance.
 - (4) Revisions
The Administrator may revise the list and thresholds under paragraphs (2) and (3) from time to time. Any revisions to the list shall take into account the toxicity, reactivity, volatility, dispersability, combust ability, or flammability of a substance. For purposes of the preceding sentence, the term "toxicity" shall include any short- or long-term health effect which may result from a short-term exposure to the substance.
- (b) Facilities covered
 - (1) Except as provided in section [11004](#) of this title, a facility is subject to the requirements of this subchapter if a substance on the list referred to in subsection (a) of this section is present at the facility in an amount in excess of the threshold planning quantity established for such substance.
 - (2) For purposes of emergency planning, a Governor or a State emergency response commission may designate additional facilities which shall be subject to the requirements of this subchapter, if such designation is made after public notice and opportunity for comment. The Governor or State emergency response commission shall notify the facility concerned of any facility designation under this paragraph.

- (c) Emergency planning notification
Not later than seven months after October 17, 1986, the owner or operator of each facility subject to the requirements of this subchapter by reason of subsection (b)(1) of this section shall notify the State emergency response commission for the State in which such facility is located that such facility is subject to the requirements of this subchapter. Thereafter, if a substance on the list of extremely hazardous substances referred to in subsection (a) of this section first becomes present at such facility in excess of the threshold planning quantity established for such substance, or if there is a revision of such list and the facility has present a substance on the revised list in excess of the threshold planning quantity established for such substance, the owner or operator of the facility shall notify the State emergency response commission and the local emergency planning committee within 60 days after such acquisition or revision that such facility is subject to the requirements of this subchapter.
- (d) Notification of Administrator
The State emergency response commission shall notify the Administrator of facilities subject to the requirements of this subchapter by notifying the Administrator of -
 - (1) each notification received from a facility under subsection (c) of this section, and
 - (2) each facility designated by the Governor or State emergency response commission under subsection (b)(2) of this section.

Sec. 11003. Comprehensive emergency response plans

- (a) Plan required
Each local emergency planning committee shall complete preparation of an emergency plan in accordance with this section not later than two years after October 17, 1986. The committee shall review such plan once a year, or more frequently as changed circumstances in the community or at any facility may require.
- (b) Resources
Each local emergency planning committee shall evaluate the need for resources necessary to develop, implement, and exercise the emergency plan, and shall make recommendations with respect to additional resources that may be required and the means for providing such additional resources.
- (c) Plan provisions
Each emergency plan shall include (but is not limited to) each of the following:
 - (1) Identification of facilities subject to the requirements of this subchapter that are within the emergency planning district, identification of routes likely to be used for the transportation of substances on the list of extremely hazardous substances referred to in section [11002\(a\)](#) of this title, and identification of additional facilities contributing or subjected to additional risk due to their proximity to facilities subject to the requirements of this subchapter, such as hospitals or natural gas facilities.
 - (2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.
 - (3) Designation of a community emergency coordinator and facility emergency coordinators, who shall make determinations necessary to implement the plan.
 - (4) Procedures providing reliable, effective, and timely notification by the facility emergency coordinators and the community emergency coordinator to persons designated in the emergency plan, and to the public, that a release has occurred (consistent with the emergency notification requirements of section [11004](#) of this title).

- (5) Methods for determining the occurrence of a release, and the area or population likely to be affected by such release.
- (6) A description of emergency equipment and facilities in the community and at each facility in the community subject to the requirements of this subchapter, and an identification of the persons responsible for such equipment and facilities.
- (7) Evacuation plans, including provisions for a precautionary evacuation and alternative traffic routes.
- (8) Training programs, including schedules for training of local emergency response and medical personnel.
- (9) Methods and schedules for exercising the emergency plan.
- (d) Providing of information
For each facility subject to the requirements of this subchapter:
 - (1) Within 30 days after establishment of a local emergency planning committee for the emergency planning district in which such facility is located, or within 11 months after October 17, 1986, whichever is earlier, the owner or operator of the facility shall notify the emergency planning committee (or the Governor if there is no committee) of a facility representative who will participate in the emergency planning process as a facility emergency coordinator.
 - (2) The owner or operator of the facility shall promptly inform the emergency planning committee of any relevant changes occurring at such facility as such changes occur or are expected to occur.
 - (3) Upon request from the emergency planning committee, the owner or operator of the facility shall promptly provide information to such committee necessary for developing and implementing the emergency plan.
- (e) Review by State emergency response commission
After completion of an emergency plan under subsection (a) of this section for an emergency planning district, the local emergency planning committee shall submit a copy of the plan to the State emergency response commission of each State in which such district is located. The commission shall review the plan and make recommendations to the committee on revisions of the plan that may be necessary to ensure coordination of such plan with emergency response plans of other emergency planning districts. To the maximum extent practicable, such review shall not delay implementation of such plan.
- (f) Guidance documents
The national response team, as established pursuant to the National Contingency Plan as established under section [9605](#) of this title, shall publish guidance documents for preparation and implementation of emergency plans. Such documents shall be published not later than five months after October 17, 1986.
- (g) Review of plans by regional response teams
The regional response teams, as established pursuant to the National Contingency Plan as established under section [9605](#) of this title, may review and comment upon an emergency plan or other issues related to preparation, implementation, or exercise of such a plan upon request of a local emergency planning committee. Such review shall not delay implementation of the plan.

Sec. 11004. Emergency notification

- (a) Types of releases

- (1) 11002(a) substance which requires CERCLA notice
If a release of an extremely hazardous substance referred to in section [11002\(a\)](#) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9603(a)) (hereafter in this section referred to as "CERCLA") (42 U.S.C. 9601 et seq.), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section.
- (2) Other 11002(a) substance
If a release of an extremely hazardous substance referred to in section [11002\(a\)](#) of this title occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release is not subject to the notification requirements under section 103(a) of CERCLA (42 U.S.C. 9603(a)), the owner or operator of the facility shall immediately provide notice as described in subsection (b) of this section, but only if the release -
 - (A) is not a federally permitted release as defined in section 101(10) of CERCLA (42 U.S.C. 9601(10)),
 - (B) is in an amount in excess of a quantity which the Administrator has determined (by regulation) requires notice, and
 - (C) occurs in a manner which would require notification under section 103(a) of CERCLA (42 U.S.C. 9603(a)).
Unless and until superseded by regulations establishing a quantity for an extremely hazardous substance described in this paragraph, a quantity of 1 pound shall be deemed that quantity the release of which requires notice as described in subsection (b) of this section.
- (3) Non-11002(a) substance which requires CERCLA notice
If a release of a substance which is not on the list referred to in section [11002\(a\)](#) of this title occurs at a facility at which a hazardous chemical is produced, used, or stored, and such release requires notification under section 103(a) of CERCLA (42 U.S.C. 9603(a)), the owner or operator shall provide notice as follows:
 - (A) If the substance is one for which a reportable quantity has been established under section 102(a) of CERCLA (42 U.S.C. 9602(a)), the owner or operator shall provide notice as described in subsection (b) of this section.
 - (B) If the substance is one for which a reportable quantity has not been established under section 102(a) of CERCLA (42 U.S.C. 9602(a)) -
 - (i) Until April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the same notice to the community emergency coordinator for the local emergency planning committee, at the same time and in the same form, as notice is provided to the National Response Center under section 103(a) of CERCLA (42 U.S.C. 9603(a)).

- (ii) On and after April 30, 1988, the owner or operator shall provide, for releases of one pound or more of the substance, the notice as described in subsection (b) of this section.
 - (4) Exempted releases
This section does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.
 - (b) Notification
 - (1) Recipients of notice
Notice required under subsection (a) of this section shall be given immediately after the release by the owner or operator of a facility (by such means as telephone, radio, or in person) to the community emergency coordinator for the local emergency planning committees, if established pursuant to section [11001](#)(c) of this title, for any area likely to be affected by the release and to the State emergency planning commission of any State likely to be affected by the release. With respect to transportation of a substance subject to the requirements of this section, or storage incident to such transportation, the notice requirements of this section with respect to a release shall be satisfied by dialing 911 or, in the absence of a 911 emergency telephone number, calling the operator.
 - (2) Contents
Notice required under subsection (a) of this section shall include each of the following (to the extent known at the time of the notice and so long as no delay in responding to the emergency results):
 - (A) The chemical name or identity of any substance involved in the release.
 - (B) An indication of whether the substance is on the list referred to in section [11002](#)(a) of this title.
 - (C) An estimate of the quantity of any such substance that was released into the environment.
 - (D) The time and duration of the release.
 - (E) The medium or media into which the release occurred.
 - (F) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals.
 - (G) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordinator pursuant to the emergency plan).
 - (H) The name and telephone number of the person or persons to be contacted for further information.
 - (c) Follow-up emergency notice
As soon as practicable after a release which requires notice under subsection (a) of this section, such owner or operator shall provide a written follow-up emergency notice (or notices, as more information becomes

available) setting forth and updating the information required under subsection (b) of this section, and including additional information with respect to -

- (1) actions taken to respond to and contain the release,
- (2) any known or anticipated acute or chronic health risks associated with the release, and
- (3) where appropriate, advice regarding medical attention necessary for exposed individuals.
- (d) Transportation exemption not applicable
The exemption provided in section [11047](#) of this title (relating to transportation) does not apply to this section.

Sec. 11005. Emergency training and review of emergency systems

- (a) Emergency training
 - (1) Programs
Officials of the United States Government carrying out existing Federal programs for emergency training are authorized to specifically provide training and education programs for Federal, State, and local personnel in hazard mitigation, emergency preparedness, fire prevention and control, disaster response, long-term disaster recovery, national security, technological and natural hazards, and emergency processes. Such programs shall provide special emphasis for such training and education with respect to hazardous chemicals.
 - (2) State and local program support
There is authorized to be appropriated to the Federal Emergency Management Agency for each of the fiscal years 1987, 1988, 1989, and 1990, \$5,000,000 for making grants to support programs of State and local governments, and to support university-sponsored programs, which are designed to improve emergency planning, preparedness, mitigation, response, and recovery capabilities. Such programs shall provide special emphasis with respect to emergencies associated with hazardous chemicals. Such grants may not exceed 80 percent of the cost of any such program. The remaining 20 percent of such costs shall be funded from non-Federal sources.
 - (3) Other programs
Nothing in this section shall affect the availability of appropriations to the Federal Emergency Management Agency for any programs carried out by such agency other than the programs referred to in paragraph (2).
- (b) Review of emergency systems
 - (1) Review
The Administrator shall initiate, not later than 30 days after October 17, 1986, a review of emergency systems for monitoring, detecting, and preventing releases of extremely hazardous substances at representative domestic facilities that produce, use, or store extremely hazardous substances. The Administrator may select representative extremely hazardous substances from the substances on the list referred to in section [11002](#)(a) of this title for the purposes of this review. The Administrator shall report interim findings to the Congress not later than seven months after October 17, 1986, and issue a final report of findings and recommendations to the Congress not later than 18

months after October 17, 1986. Such report shall be prepared in consultation with the States and appropriate Federal agencies.

○ (2) Report

The report required by this subsection shall include the Administrator's findings regarding each of the following:

- (A) The status of current technological capabilities to (i) monitor, detect, and prevent, in a timely manner, significant releases of extremely hazardous substances, (ii) determine the magnitude and direction of the hazard posed by each release,
 - (iii) identify specific substances, (iv) provide data on the specific chemical composition of such releases, and (v) determine the relative concentrations of the constituent substances.
- (B) The status of public emergency alert devices or systems for providing timely and effective public warning of an accidental release of extremely hazardous substances into the environment, including releases into the atmosphere, surface water, or groundwater from facilities that produce, store, or use significant quantities of such extremely hazardous substances.
- (C) The technical and economic feasibility of establishing, maintaining, and operating perimeter alert systems for detecting releases of such extremely hazardous substances into the atmosphere, surface water, or groundwater, at facilities that manufacture, use, or store significant quantities of such substances.

○ (3) Recommendations

The report required by this subsection shall also include the Administrator's recommendations for -

- (A) initiatives to support the development of new or improved technologies or systems that would facilitate the timely monitoring, detection, and prevention of releases of extremely hazardous substances, and
- (B) improving devices or systems for effectively alerting the public in a timely manner, in the event of an accidental release of such extremely hazardous substances.

SUBCHAPTER II - REPORTING REQUIREMENTS

Sec. 11021. Material safety data sheets

• (a) Basic requirement

○ (1) Submission of MSDS or list

The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act shall submit a material safety data sheet for each such chemical, or a list of such chemicals as described in paragraph (2), to each of the following:

- (A) The appropriate local emergency planning committee.
- (B) The State emergency response commission.

- (C) The fire department with jurisdiction over the facility.
- (2) Contents of list
 - (A) The list of chemicals referred to in paragraph (1) shall include each of the following:
 - (i) A list of the hazardous chemicals for which a material safety data sheet is required under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act, grouped in categories of health and physical hazards as set forth under such Act and regulations promulgated under such Act, or in such other categories as the Administrator may prescribe under subparagraph (B).
 - (ii) The chemical name or the common name of each such chemical as provided on the material safety data sheet.
 - (iii) Any hazardous component of each such chemical as provided on the material safety data sheet.
 - (B) For purposes of the list under this paragraph, the Administrator may modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency.
- (3) Treatment of mixtures

An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:

 - (A) Submitting a material safety data sheet for, or identifying on a list, each element or compound in the mixture which is a hazardous chemical. If more than one mixture has the same element or compound, only one material safety data sheet, or one listing, of the element or compound is necessary.
 - (B) Submitting a material safety data sheet for, or identifying on a list, the mixture itself.
- (b) Thresholds

The Administrator may establish threshold quantities for hazardous chemicals below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.
- (c) Availability of MSDS on request
 - (1) To local emergency planning committee

If an owner or operator of a facility submits a list of chemicals under subsection (a)(1) of this section, the owner or operator, upon request by the local emergency planning committee, shall submit the material safety data sheet for any chemical on the list to such committee.
 - (2) To public

A local emergency planning committee, upon request by any person, shall make available a material safety data sheet to the person in accordance with section [11044](#) of this title. If the

local emergency planning committee does not have the requested material safety data sheet, the committee shall request the sheet from the facility owner or operator and then make the sheet available to the person in accordance with section [11044](#) of this title.

- (d) Initial submission and updating
 - (1) The initial material safety data sheet or list required under this section with respect to a hazardous chemical shall be provided before the later of -
 - (A) 12 months after October 17, 1986, or
 - (B) 3 months after the owner or operator of a facility is required to prepare or have available a material safety data sheet for the chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act.
 - (2) Within 3 months following discovery by an owner or operator of significant new information concerning an aspect of a hazardous chemical for which a material safety data sheet was previously submitted to the local emergency planning committee under subsection (a) of this section, a revised sheet shall be provided to such person.
- (e) "Hazardous chemical" defined

For purposes of this section, the term "hazardous chemical" has the meaning given such term by section [1910.1200\(c\)](#) of title 29 of the Code of Federal Regulations, except that such term does not include the following:

 - (1) Any food, food additive, color additive, drug, or cosmetic regulated by the Food and Drug Administration.
 - (2) Any substance present as a solid in any manufactured item to the extent exposure to the substance does not occur under normal conditions of use.
 - (3) Any substance to the extent it is used for personal, family, or household purposes, or is present in the same form and concentration as a product packaged for distribution and use by the general public.
 - (4) Any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual.
 - (5) Any substance to the extent it is used in routine agricultural operations or is a fertilizer held for sale by a retailer to the ultimate customer.

Sec. 11022. Emergency and hazardous chemical inventory forms

- (a) Basic requirement
 - (1) The owner or operator of any facility which is required to prepare or have available a material safety data sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act shall prepare and submit an emergency and hazardous chemical inventory form (hereafter in this chapter referred to as an "inventory form") to each of the following:
 - (A) The appropriate local emergency planning committee.
 - (B) The State emergency response commission.

- (C) The fire department with jurisdiction over the facility.
- (2) The inventory form containing tier I information (as described in subsection (d)(1) of this section) shall be submitted on or before March 1, 1988, and annually thereafter on March 1, and shall contain data with respect to the preceding calendar year. The preceding sentence does not apply if an owner or operator provides, by the same deadline and with respect to the same calendar year, tier II information (as described in subsection (d)(2) of this section) to the recipients described in paragraph (1).
- (3) An owner or operator may meet the requirements of this section with respect to a hazardous chemical which is a mixture by doing one of the following:
 - (A) Providing information on the inventory form on each element or compound in the mixture, which is a hazardous chemical. If more than one mixture has the same element or compound, only one listing on the inventory form for the element or compound at the facility is necessary.
 - (B) Providing information on the inventory form on the mixture itself.
- (b) Thresholds
The Administrator may establish threshold quantities for hazardous chemicals covered by this section below which no facility shall be subject to the provisions of this section. The threshold quantities may, in the Administrator's discretion, be based on classes of chemicals or categories of facilities.
- (c) Hazardous chemicals covered
A hazardous chemical subject to the requirements of this section is any hazardous chemical for which a material safety data sheet or a listing is required under section [11021](#) of this title.
- (d) Contents of form
 - (1) Tier I information
 - (A) Aggregate information by category
An inventory form shall provide the information described in subparagraph (B) in aggregate terms for hazardous chemicals in categories of health and physical hazards as set forth under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act.
 - (B) Required information
The information referred to in subparagraph (A) is the following:
 - (i) An estimate (in ranges) of the maximum amount of hazardous chemicals in each category present at the facility at any time during the preceding calendar year.
 - (ii) An estimate (in ranges) of the average daily amount of hazardous chemicals in each category present at the facility during the preceding calendar year.
 - (iii) The general location of hazardous chemicals in each category.
 - (C) Modifications
For purposes of reporting information under this paragraph, the Administrator may -
 - (i) modify the categories of health and physical hazards as set forth under the Occupational Safety and Health Act of

1970 (29 U.S.C. 651 et seq.) and regulations promulgated under that Act by requiring information to be reported in terms of groups of hazardous chemicals which present similar hazards in an emergency, or

- (ii) require reporting on individual hazardous chemicals of special concern to emergency response personnel.

- (2) Tier II information

An inventory form shall provide the following additional information for each hazardous chemical present at the facility, but only upon request and in accordance with subsection (e) of this section:

- (A) The chemical name or the common name of the chemical as provided on the material safety data sheet.
- (B) An estimate (in ranges) of the maximum amount of the hazardous chemical present at the facility at any time during the preceding calendar year.
- (C) An estimate (in ranges) of the average daily amount of the hazardous chemical present at the facility during the preceding calendar year.
- (D) A brief description of the manner of storage of the hazardous chemical.
- (E) The location at the facility of the hazardous chemical.
- (F) An indication of whether the owner elects to withhold location information of a specific hazardous chemical from disclosure to the public under section [11044](#) of this title.

- (e) Availability of tier II information

- (1) Availability to State commissions, local committees, and fire departments

Upon request by a State emergency planning commission, a local emergency planning committee, or a fire department with jurisdiction over the facility, the owner or operator of a facility shall provide tier II information, as described in subsection (d) of this section, to the person making the request. Any such request shall be with respect to a specific facility.

- (2) Availability to other State and local officials

A State or local official acting in his or her official capacity may have access to tier II information by submitting a request to the State emergency response commission or the local emergency planning committee. Upon receipt of a request for tier II information, the State commission or local committee shall, pursuant to paragraph (1), request the facility owner or operator for the tier II information and make available such information to the official.

- (3) Availability to public

- (A) In general
Any person may request a State emergency response commission or local emergency planning committee for tier II information

relating to the preceding calendar year with respect to a facility. Any such request shall be in writing and shall be with respect to a specific facility.

- (B) Automatic provision of information to public
Any tier II information which a State emergency response commission or local emergency planning committee has in its possession shall be made available to a person making a request under this paragraph in accordance with section [11044](#) of this title. If the State emergency response commission or local emergency planning committee does not have the tier II information in its possession, upon a request for tier II information the State emergency response commission or local emergency planning committee shall, pursuant to paragraph (1), request the facility owner or operator for tier II information with respect to a hazardous chemical which a facility has stored in an amount in excess of 10,000 pounds present at the facility at any time during the preceding calendar year and make such information available in accordance with section 11044 of this title to the person making the request.
- (C) Discretionary provision of information to public
In the case of tier II information which is not in the possession of a State emergency response commission or local emergency planning committee and which is with respect to a hazardous chemical which a facility has stored in an amount less than 10,000 pounds present at the facility at any time during the preceding calendar year, a request from a person must include the general need for the information. The State emergency response commission or local emergency planning committee may, pursuant to paragraph (1), request the facility owner or operator for the tier II information on behalf of the person making the request. Upon receipt of any information requested on behalf of such person, the State emergency response commission or local emergency planning committee shall make the information available in accordance with section [11044](#) of this title to the person.
- (D) Response in 45 days
A State emergency response commission or local emergency planning committee shall respond to a request for tier II information under this paragraph no later than 45 days after the date of receipt of the request.

- (f) Fire department access
Upon request to an owner or operator of a facility which files an inventory form under this section by the fire department with jurisdiction over the facility, the owner or operator of the facility shall allow the fire department to conduct an on-site inspection of the facility and shall provide to the fire department specific location information on hazardous chemicals at the facility.
- (g) Format of forms
The Administrator shall publish a uniform format for inventory forms within three months after October 17, 1986. If the Administrator does not publish such forms, owners and operators of facilities subject to the requirements of this section shall provide the information required under this section by letter.

Sec. 11023. Toxic chemical release forms

- (a) Basic requirement
The owner or operator of a facility subject to the requirements of this section shall complete a toxic chemical release form as published under subsection (g) of this section for each toxic chemical listed under subsection (c) of this section that was manufactured, processed, or otherwise used in quantities exceeding the toxic

chemical threshold quantity established by subsection (f) of this section during the preceding calendar year at such facility. Such form shall be submitted to the Administrator and to an official or officials of the State designated by the Governor on or before July 1, 1988, and annually thereafter on July 1 and shall contain data reflecting releases during the preceding calendar year.

- (b) Covered owners and operators of facilities
 - (1) In general
 - (A) The requirements of this section shall apply to owners and operators of facilities that have 10 or more full-time employees and that are in Standard Industrial Classification Codes 20 through 39 (as in effect on July 1, 1985) and that manufactured, processed, or otherwise used a toxic chemical listed under subsection (c) of this section in excess of the quantity of that toxic chemical established under subsection (f) of this section during the calendar year for which a release form is required under this section.
 - (B) The Administrator may add or delete Standard Industrial Classification Codes for purposes of subparagraph (A), but only to the extent necessary to provide that each Standard Industrial Code to which this section applies is relevant to the purposes of this section.
 - (C) For purposes of this section -
 - (i) The term "manufacture" means to produce, prepare, import, or compound a toxic chemical.
 - (ii) The term "process" means the preparation of a toxic chemical, after its manufacture, for distribution in commerce -
 - (I) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such chemical, or
 - (II) as part of an article containing the toxic chemical.
 - (2) Discretionary application to additional facilities
 The Administrator, on his own motion or at the request of a Governor of a State (with regard to facilities located in that State), may apply the requirements of this section to the owners and operators of any particular facility that manufactures, processes, or otherwise uses a toxic chemical listed under subsection (c) of this section if the Administrator determines that such action is warranted on the basis of toxicity of the toxic chemical, proximity to other facilities that release the toxic chemical or to population centers, the history of releases of such chemical at such facility, or such other factors as the Administrator deems appropriate.
- (c) Toxic chemicals covered
 The toxic chemicals subject to the requirements of this section are those chemicals on the list in Committee Print Number 99-169 of the Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986" (42 U.S.C. 11023) (including any revised version of the list as may be made pursuant to subsection (d) or (e) of this section).
- (d) Revisions by Administrator

- (1) In general
The Administrator may by rule add or delete a chemical from the list described in subsection (c) of this section at any time.
- (2) Additions
A chemical may be added if the Administrator determines, in his judgment, that there is sufficient evidence to establish any one of the following:
 - (A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.
 - (B) The chemical is known to cause or can reasonably be anticipated to cause in humans -
 - (i) cancer or teratogenic effects, or
 - (ii) serious or irreversible -
 - (I) reproductive dysfunctions,
 - (II) neurological disorders,
 - (III) heritable genetic mutations, or
 - (IV) other chronic health effects.
 - (C) The chemical is known to cause or can reasonably be anticipated to cause, because of -
 - (i) its toxicity,
 - (ii) its toxicity and persistence in the environment, or
 - (iii) its toxicity and tendency to bioaccumulate in the environment,
a significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting under this section. The number of chemicals included on the list described in subsection (c) of this section on the basis of the preceding sentence may constitute in the aggregate no more than 25 percent of the total number of chemicals on the list.
A determination under this paragraph shall be based on generally accepted scientific principles or laboratory tests, or appropriately designed and conducted epidemiological or other population studies, available to the Administrator.
- (3) Deletions
A chemical may be deleted if the Administrator determines there is not sufficient evidence to establish any of the criteria described in paragraph (2).
- (4) Effective date
Any revision made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any revision made on or after December 1 of any calendar year and before January 1 of the next calendar year

shall take effect beginning with the calendar year following such next calendar year.

- (e) Petitions

- (1) In general

Any person may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A) or (B) of subsection (d)(2) of this section. Within 180 days after receipt of a petition, the Administrator shall take one of the following actions:

- (A) Initiate a rulemaking to add or delete the chemical to the list, in accordance with subsection (d)(2) or (d)(3) of this section.
 - (B) Publish an explanation of why the petition is denied.

- (2) Governor petitions

A State Governor may petition the Administrator to add or delete a chemical from the list described in subsection (c) of this section on the basis of the criteria in subparagraph (A), such a petition from a State Governor to delete a chemical, the petition shall be treated in the same manner as a petition received under paragraph (1) to delete a chemical. In the case of such a petition from a State Governor to add a chemical, the chemical will be added to the list within 180 days after receipt of the petition, unless the Administrator -

- (A) initiates a rulemaking to add the chemical to the list, in accordance with subsection (d)(2) of this section, or
 - (B) publishes an explanation of why the Administrator believes the petition does not meet the requirements of subsection (d)(2) of this section for adding a chemical to the list.

- (f) Threshold for reporting

- (1) Toxic chemical threshold amount

The threshold amounts for purposes of reporting toxic chemicals under this section are as follows:

- (A) With respect to a toxic chemical used at a facility, 10,000 pounds of the toxic chemical per year.
 - (B) With respect to a toxic chemical manufactured or processed at a facility -
 - (i) For the toxic chemical release form required to be submitted under this section on or before July 1, 1988, 75,000 pounds of the toxic chemical per year.
 - (ii) For the form required to be submitted on or before July 1, 1989, 50,000 pounds of the toxic chemical per year.
 - (iii) For the form required to be submitted on or before July 1, 1990, and for each form thereafter, 25,000 pounds of the toxic chemical per year.

- (2) Revisions

The Administrator may establish a threshold amount for a toxic chemical different from the amount established by paragraph (1). Such revised threshold shall obtain reporting on a substantial majority of total releases of the chemical at all facilities subject to the requirements of this section. The amounts established under this paragraph may, at the Administrator's discretion, be based on classes of chemicals or categories of facilities.

- (g) Form

- (1) Information required

Not later than June 1, 1987, the Administrator shall publish a uniform toxic chemical release form for facilities covered by this section. If the Administrator does not publish such a form, owners and operators of facilities subject to the requirements of this section shall provide the information required under this subsection by letter postmarked on or before the date on which the form is due. Such form shall -

- (A) provide for the name and location of, and principal business activities at, the facility;
- (B) include an appropriate certification, signed by a senior official with management responsibility for the person or persons completing the report, regarding the accuracy and completeness of the report; and
- (C) provide for submission of each of the following items of information for each listed toxic chemical known to be present at the facility:
 - (i) Whether the toxic chemical at the facility is manufactured, processed, or otherwise used, and the general category or categories of use of the chemical.
 - (ii) An estimate of the maximum amounts (in ranges) of the toxic chemical present at the facility at any time during the preceding calendar year.
 - (iii) For each waste stream, the waste treatment or disposal methods employed, and an estimate of the treatment efficiency typically achieved by such methods for that waste stream.
 - (iv) The annual quantity of the toxic chemical entering each environmental medium.

- (2) Use of available data

In order to provide the information required under this section, the owner or operator of a facility may use readily available data (including monitoring data) collected pursuant to other provisions of law, or, where such data are not readily available, reasonable estimates of the amounts involved. Nothing in this section requires the monitoring or measurement of the quantities, concentration, or frequency of any toxic chemical released into the environment beyond that monitoring and measurement required under other provisions of law or regulation. In order to assure consistency, the Administrator shall require that data be expressed in common units.

- (h) Use of release form
The release forms required under this section are intended to provide information to the Federal, State, and local governments and the public, including citizens of communities surrounding covered facilities. The release form shall be available, consistent with section [11044](#)(a) of this title, to inform persons about releases of toxic chemicals to the environment; to assist governmental agencies, researchers, and other persons in the conduct of research and data gathering; to aid in the development of appropriate regulations, guidelines, and standards; and for other similar purposes.
- (i) Modifications in reporting frequency
 - (1) In general
The Administrator may modify the frequency of submitting a report under this section, but the Administrator may not modify the frequency to be any more often than annually. A modification may apply, either nationally or in a specific geographic area, to the following:
 - (A) All toxic chemical release forms required under this section.
 - (B) A class of toxic chemicals or a category of facilities.
 - (C) A specific toxic chemical.
 - (D) A specific facility.
 - (2) Requirements
A modification may be made under paragraph (1) only if the Administrator -
 - (A) makes a finding that the modification is consistent with the provisions of subsection (h) of this section, based on -
- (i) experience from previously submitted toxic chemical release forms, and
(ii) determinations made under paragraph (3), and
(B) the finding is made by a rulemaking in accordance with section [553](#) of title 5.
 - (3) Determinations
The Administrator shall make the following determinations with respect to a proposed modification before making a modification under paragraph (1):
 - (A) The extent to which information relating to the proposed modification provided on the toxic chemical release forms has been used by the Administrator or other agencies of the Federal Government, States, local governments, health professionals, and the public.
 - (B) The extent to which the information is (i) readily available to potential users from other sources, such as State reporting programs, and (ii) provided to the Administrator under another Federal law or through a State program.
 - (C) The extent to which the modification would impose additional and unreasonable burdens on facilities subject to the reporting requirements under this section.
 - (4) 5-year review
Any modification made under this subsection shall be reviewed

at least once every 5 years. Such review shall examine the modification and ensure that the requirements of paragraphs (2) and (3) still justify continuation of the modification. Any change to a modification reviewed under this paragraph shall be made in accordance with this subsection.

- (5) Notification to Congress
The Administrator shall notify Congress of an intention to initiate a rulemaking for a modification under this subsection. After such notification, the Administrator shall delay initiation of the rulemaking for at least 12 months, but no more than 24 months, after the date of such notification.
- (6) Judicial review
In any judicial review of a rulemaking which establishes a modification under this subsection, a court may hold unlawful and set aside agency action, findings, and conclusions found to be unsupported by substantial evidence.
- (7) Applicability
A modification under this subsection may apply to a calendar year or other reporting period beginning no earlier than January 1, 1993.
- (8) Effective date
Any modification made on or after January 1 and before December 1 of any calendar year shall take effect beginning with the next calendar year. Any modification made on or after December 1 of any calendar year and before January 1 of the next calendar year shall take effect beginning with the calendar year following such next calendar year.
 - (j) EPA management of data
The Administrator shall establish and maintain in a computer data base a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis.
 - (k) Report
Not later than June 30, 1991, the Comptroller General, in consultation with the Administrator and appropriate officials in the States, shall submit to the Congress a report including each of the following:
 - (1) A description of the steps taken by the Administrator and the States to implement the requirements of this section, including steps taken to make information collected under this section available to and accessible by the public.
 - (2) A description of the extent to which the information collected under this section has been used by the Environmental Protection Agency, other Federal agencies, the States, and the public, and the purposes for which the information has been used.
 - (3) An identification and evaluation of options for modifications to the requirements of this section for the purpose of making information collected under this section more useful.
 - (l) Mass balance study

- (1) In general
The Administrator shall arrange for a mass balance study to be carried out by the National Academy of Sciences using mass balance information collected by the Administrator under paragraph (3). The Administrator shall submit to Congress a report on such study no later than 5 years after October 17, 1986.
- (2) Purposes
The purposes of the study are as follows:
 - (A) To assess the value of mass balance analysis in determining the accuracy of information on toxic chemical releases.
 - (B) To assess the value of obtaining mass balance information, or portions thereof, to determine the waste reduction efficiency of different facilities, or categories of facilities, including the effectiveness of toxic chemical regulations promulgated under laws other than this chapter.
 - (C) To assess the utility of such information for evaluating toxic chemical management practices at facilities, or categories of facilities, covered by this section.
 - (D) To determine the implications of mass balance information collection on a national scale similar to the mass balance information collection carried out by the Administrator under paragraph (3), including implications of the use of such collection as part of a national annual quantity toxic chemical release program.
- (3) Information collection
 - (A) The Administrator shall acquire available mass balance information from States which currently conduct (or during the 5 years after October 17, 1986 initiate) a mass balance-oriented annual quantity toxic chemical release program. If information from such States provides an inadequate representation of industry classes and categories to carry out the purposes of the study, the Administrator also may acquire mass balance information necessary for the study from a representative number of facilities in other States.
 - (B) Any information acquired under this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator or any officer, employee, or representative has access under this section if made public would divulge information entitled to protection under section [1905](#) of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this section.
 - (C) The Administrator may promulgate regulations prescribing procedures for collecting mass balance information under this paragraph.

- (D) For purposes of collecting mass balance information under subparagraph (A), the Administrator may require the submission of information by a State or facility.
- (4) Mass balance definition
For purposes of this subsection, the term "mass balance" means an accumulation of the annual quantities of chemicals transported to a facility, produced at a facility, consumed at a facility, used at a facility, accumulated at a facility, released from a facility, and transported from a facility as a waste or as a commercial product or byproduct or component of a commercial product or byproduct.

SUBCHAPTER III - GENERAL PROVISIONS

Sec. 11041. Relationship to other law

- (a) In general
Nothing in this chapter shall -
 - (1) preempt any State or local law,
 - (2) except as provided in subsection (b) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law, or
 - (3) affect or modify in any way the obligations or liabilities of any person under other Federal law.
- (b) Effect on MSDS requirements
Any State or local law enacted after August 1, 1985, which requires the submission of a material safety data sheet from facility owners or operators shall require that the data sheet be identical in content and format to the data sheet required under subsection (a) of section [11021](#) of this title. In addition, a State or locality may require the submission of information which is supplemental to the information required on the data sheet (including information on the location and quantity of hazardous chemicals present at the facility), through additional sheets attached to the data sheet or such other means as the State or locality considers appropriate.

Sec. 11042. Trade secrets

- (a) Authority to withhold information
 - (1) General authority
 - (A) With regard to a hazardous chemical, an extremely hazardous substance, or a toxic chemical, any person required under section 11003(d)(2), 11003(d)(3), 11021, 11022, or 11023 of this title to submit information to any other person may withhold from such submittal the specific chemical identity (including the chemical name and other specific identification), as defined in regulations prescribed by the Administrator under subsection (c) of this section, if the person complies with paragraph (2).
 - (B) Any person withholding the specific chemical identity shall, in the place on the submittal where the chemical identity would normally be included, include the generic class or category of the hazardous chemical, extremely hazardous substance, or toxic chemical (as the case may be).
 - (2) Requirements
 - (A) A person is entitled to withhold information under paragraph (1) if such person -

- (i) claims that such information is a trade secret, on the basis of the factors enumerated in subsection (b) of this section,
 - (ii) includes in the submittal referred to in paragraph (1) an explanation of the reasons why such information is claimed to be a trade secret, based on the factors enumerated in subsection (b) of this section, including a specific description of why such factors apply, and
 - (iii) submits to the Administrator a copy of such submittal, and the information withheld from such submittal.
 - (B) In submitting to the Administrator the information required by subparagraph (A)(iii), a person withholding information under this subsection may -
 - (i) designate, in writing and in such manner as the Administrator may prescribe by regulation, the information which such person believes is entitled to be withheld under paragraph (1), and
 - (ii) submit such designated information separately from other information submitted under this subsection.
 - (3) Limitation
The authority under this subsection to withhold information shall not apply to information which the Administrator has determined, in accordance with subsection (c) of this section, is not a trade secret.
- (b) Trade secret factors
No person required to provide information under this chapter may claim that the information is entitled to protection as a trade secret under subsection (a) of this section unless such person shows each of the following:
 - (1) Such person has not disclosed the information to any other person, other than a member of a local emergency planning committee, an officer or employee of the United States or a State or local government, an employee of such person, or a person who is bound by a confidentiality agreement, and such person has taken reasonable measures to protect the confidentiality of such information and intends to continue to take such measures.
 - (2) The information is not required to be disclosed, or otherwise made available, to the public under any other Federal or State law.
 - (3) Disclosure of the information is likely to cause substantial harm to the competitive position of such person.
 - (4) The chemical identity is not readily discoverable through reverse engineering.
- (c) Trade secret regulations
As soon as practicable after October 17, 1986, the Administrator shall prescribe regulations to implement this section. With respect to subsection (b)(4) of this section, such regulations shall be equivalent to comparable provisions in the Occupational Safety and Health Administration Hazard Communication Standard (29 C.F.R. 1910.1200) and any revisions of such standard prescribed by the Secretary of Labor in accordance with the final ruling of the courts of the United States in *United Steelworkers of America, AFL-CIO-CLC v. Thorne G. Auchter*.
- (d) Petition for review

- (1) In general
Any person may petition the Administrator for the disclosure of the specific chemical identity of a hazardous chemical, an extremely hazardous substance, or a toxic chemical which is claimed as a trade secret under this section. The Administrator may, in the absence of a petition under this paragraph, initiate a determination, to be carried out in accordance with this subsection, as to whether information withheld constitutes a trade secret.
- (2) Initial review
Within 30 days after the date of receipt of a petition under paragraph (1) (or upon the Administrator's initiative), the Administrator shall review the explanation filed by a trade secret claimant under subsection (a)(2) of this section and determine whether the explanation presents assertions which, if true, are sufficient to support a finding that the specific chemical identity is a trade secret.
- (3) Finding of sufficient assertions
 - (A) If the Administrator determines pursuant to paragraph (2) that the explanation presents sufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to supplement the explanation with detailed information to support the assertions.
 - (B) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are true and that the specific chemical identity is a trade secret, the Administrator shall so notify the petitioner and the petitioner may seek judicial review of the determination.
 - (C) If the Administrator determines, after receipt of any supplemental supporting detailed information under subparagraph (A), that the assertions in the explanation are not true and that the specific chemical identity is not a trade secret, the Administrator shall notify the trade secret claimant that the Administrator intends to release the specific chemical identity. The trade secret claimant has 30 days in which he may appeal the Administrator's determination under this subparagraph to the Administrator. If the Administrator does not reverse his determination under this subparagraph in such an appeal by the trade secret claimant, the trade secret claimant ^[1] may seek judicial review of the determination.
- (4) Finding of insufficient assertions
 - (A) If the Administrator determines pursuant to paragraph (2) that the explanation presents insufficient assertions to support a finding that the specific chemical identity is a trade secret, the Administrator shall notify the trade secret claimant that he has 30 days to appeal the determination to the Administrator, or, upon a showing of good cause, amend the original explanation by providing supplementary assertions to support the trade secret claim.

- (B) If the Administrator does not reverse his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the Administrator shall so notify the trade secret claimant and the trade secret claimant may seek judicial review of the determination.
 - (C) If the Administrator reverses his determination under subparagraph (A) after an appeal or an examination of any supplementary assertions under subparagraph (A), the procedures under paragraph (3) of this subsection apply.
- (e) Exception for information provided to health professionals
Nothing in this section, or regulations adopted pursuant to this section, shall authorize any person to withhold information which is required to be provided to a health professional, a doctor, or a nurse in accordance with section [11043](#) of this title.
- (f) Providing information to Administrator; availability to public
Any information submitted to the Administrator under subsection (a)(2) of this section or subsection (d)(3) of this section (except a specific chemical identity) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that the information (or a particular part thereof) to which the Administrator has access under this section if made public would divulge information entitled to protection under section [1905](#) of title 18, such information or part shall be considered confidential in accordance with the purposes of that section, except that such information or part may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter.
- (g) Information provided to State
Upon request by a State, acting through the Governor of the State, the Administrator shall provide to the State any information obtained under subsection (a)(2) of this section and subsection (d)(3) of this section.
- (h) Information on adverse effects
 - (1) In any case in which the identity of a hazardous chemical or an extremely hazardous substance is claimed as a trade secret, the Governor or State emergency response commission established under section [11001](#) of this title shall identify the adverse health effects associated with the hazardous chemical or extremely hazardous substance and shall assure that such information is provided to any person requesting information about such hazardous chemical or extremely hazardous substance.
 - (2) In any case in which the identity of a toxic chemical is claimed as a trade secret, the Administrator shall identify the adverse health and environmental effects associated with the toxic chemical and shall assure that such information is included in the computer database required by section [11023\(j\)](#) of this title and is provided to any person requesting information about such toxic chemical.
- (i) Information provided to Congress
Notwithstanding any limitation [\[2\]](#) contained in this section or any other provision of law, all information reported to or otherwise obtained by the Administrator (or any representative of the Administrator) under this chapter shall be made available to a duly authorized committee of the Congress upon written request by such a committee.

Footnotes

[\[1\]](#) So in original. Probably should be "claimant".

[\[2\]](#) So in original. Probably should be "limitation".

Sec. 11043. Provision of information to health professionals, doctors, and nurses

- (a) Diagnosis or treatment by health professional
An owner or operator of a facility which is subject to the requirements of section [11021](#), [11022](#), or [11023](#) of this title shall provide the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical to any health professional who requests such information in writing if the health professional provides a written statement of need under this subsection and a written confidentiality agreement under subsection (d) of this section. The written statement of need shall be a statement that the health professional has a reasonable basis to suspect that -

- (1) the information is needed for purposes of diagnosis or treatment of an individual,
- (2) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned, and
- (3) knowledge of the specific chemical identity of such chemical will assist in diagnosis or treatment. Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the health professional. The authority to withhold the specific chemical identity of a chemical under section [11042](#) of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.
- (b) Medical emergency

An owner or operator of a facility which is subject to the requirements of section [11021](#), [11022](#), or 11023 of this title shall provide a copy of a material safety data sheet, an inventory form, or a toxic chemical release form, including the specific chemical identity, if known, of a hazardous chemical, extremely hazardous substance, or a toxic chemical, to any treating physician or nurse who requests such information if such physician or nurse determines that -

 - (1) a medical emergency exists,
 - (2) the specific chemical identity of the chemical concerned is necessary for or will assist in emergency or first-aid diagnosis or treatment, and
 - (3) the individual or individuals being diagnosed or treated have been exposed to the chemical concerned. Immediately following such a request, the owner or operator to whom such request is made shall provide the requested information to the physician or nurse. The authority to withhold the specific chemical identity of a chemical from a material safety data sheet, an inventory form, or a toxic chemical release form under section [11042](#) of this title when such information is a trade secret shall not apply to information required to be provided to a treating physician or nurse under this subsection. No written confidentiality agreement or statement of need shall be required as a precondition of such disclosure, but the owner or operator disclosing such information may require a written confidentiality agreement in accordance with subsection (d) of this section and a statement setting forth the items listed in paragraphs (1) through
 - (3) as soon as circumstances permit.
- (c) Preventive measures by local health professionals
 - (1) Provision of information

An owner or operator of a facility subject to the requirements of section [11021](#), [11022](#), or 11023 of this title shall provide the specific chemical identity, if known, of a hazardous chemical, an extremely hazardous substance, or a toxic chemical to any health professional (such as a physician, toxicologist, or epidemiologist) -

 - (A) who is a local government employee or a person under contract with the local government, and
 - (B) who requests such information in writing and provides a written statement of need under paragraph (2) and a written confidentiality agreement under subsection (d) of this section. Following such a written request, the owner or operator to whom such request is made shall promptly provide the requested information to the local health professional. The authority to withhold the specific chemical identity of a chemical under section [11042](#) of this title when such information is a trade secret shall not apply to information required to be provided under this subsection, subject to the provisions of subsection (d) of this section.

- (2) Written statement of need
The written statement of need shall be a statement that describes with reasonable detail one or more of the following health needs for the information:
 - (A) To assess exposure of persons living in a local community to the hazards of the chemical concerned.
 - (B) To conduct or assess sampling to determine exposure levels of various population groups.
 - (C) To conduct periodic medical surveillance of exposed population groups.
 - (D) To provide medical treatment to exposed individuals or population groups.
 - (E) To conduct studies to determine the health effects of exposure.
 - (F) To conduct studies to aid in the identification of a chemical that may reasonably be anticipated to cause an observed health effect.
- (d) Confidentiality agreement
Any person obtaining information under subsection (a) or (c) of this section shall, in accordance with such subsection (a) or (c) of this section, be required to agree in a written confidentiality agreement that he will not use the information for any purpose other than the health needs asserted in the statement of need, except as may otherwise be authorized by the terms of the agreement or by the person providing such information. Nothing in this subsection shall preclude the parties to a confidentiality agreement from pursuing any remedies to the extent permitted by law.
- (e) Regulations
As soon as practicable after October 17, 1986, the Administrator shall promulgate regulations describing criteria and parameters for the statement of need under subsection [11](#) (a) and (c) of this section and the confidentiality agreement under subsection (d) of this section.

Footnotes

[\[1\]](#) So in original. Probably should be "subsections".

Sec. 11044. Public availability of plans, data sheets, forms, and follow-up notices

- (a) Availability to public
Each emergency response plan, material safety data sheet, list described in section [11021](#)(a)(2) of this title, inventory form, toxic chemical release form, and follow-up emergency notice shall be made available to the general public, consistent with section [11042](#) of this title, during normal working hours at the location or locations designated by the Administrator, Governor, State emergency response commission, or local emergency planning committee, as appropriate. Upon request by an owner or operator of a facility subject to the requirements of section [11022](#) of this title, the State emergency response commission and the appropriate local emergency planning committee shall withhold from disclosure under this section the location of any specific chemical required by section [11022](#)(d)(2) of this title to be contained in an inventory form as tier II information.
- (b) Notice of public availability
Each local emergency planning committee shall annually publish a notice in local newspapers that the emergency response plan, material safety data sheets, and inventory forms have been submitted under this section. The notice shall state that follow-up emergency notices may subsequently be issued. Such notice shall announce that members of the public who wish to review any such plan, sheet, form, or follow-up notice may do so at the location designated under subsection (a) of this section.

Sec. 11045. Enforcement

- (a) Civil penalties for emergency planning
The Administrator may order a facility owner or operator (except an owner or operator of a facility designated

under section [11002](#)(b)(2) of this title) to comply with section [11002](#)(c) of this title and section [11003](#)(d) of this title. The United States district court for the district in which the facility is located shall have jurisdiction to enforce the order, and any person who violates or fails to obey such an order shall be liable to the United States for a civil penalty of not more than \$25,000 for each day in which such violation occurs or such failure to comply continues.

- (b) Civil, administrative, and criminal penalties for emergency notification
 - (1) Class I administrative penalty
 - (A) A civil penalty of not more than \$25,000 per violation may be assessed by the Administrator in the case of a violation of the requirements of section [11004](#) of this title.
 - (B) No civil penalty may be assessed under this subsection unless the person accused of the violation is given notice and opportunity for a hearing with respect to the violation.
 - (C) In determining the amount of any penalty assessed pursuant to this subsection, the Administrator shall take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.
 - (2) Class II administrative penalty

A civil penalty of not more than \$25,000 per day for each day during which the violation continues may be assessed by the Administrator in the case of a violation of the requirements of section [11004](#) of this title. In the case of a second or subsequent violation the amount of such penalty may be not more than \$75,000 for each day during which the violation continues. Any civil penalty under this subsection shall be assessed and collected in the same manner, and subject to the same provisions, as in the case of civil penalties assessed and collected under section [2615](#) of title 15. In any proceeding for the assessment of a civil penalty under this subsection the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures.
 - (3) Judicial assessment

The Administrator may bring an action in the United States District [11](#) court for the appropriate district to assess and collect a penalty of not more than \$25,000 per day for each day during which the violation continues in the case of a violation of the requirements of section [11004](#) of this title. In the case of a second or subsequent violation, the amount of such penalty may be not more than \$75,000 for each day during which the violation continues.
 - (4) Criminal penalties

Any person who knowingly and willfully fails to provide notice in accordance with section [11004](#) of this title shall, upon conviction, be fined not more than \$25,000 or imprisoned for not more than two years, or both (or in the case of a second or subsequent conviction, shall be fined not more than \$50,000 or imprisoned for not more than five years, or both).

- (c) Civil and administrative penalties for reporting requirements
 - (1) Any person (other than a governmental entity) who violates any requirement of section [11022](#) or 11023 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.
 - (2) Any person (other than a governmental entity) who violates any requirement of section [11021](#) or 11043(b) of this title, and any person who fails to furnish to the Administrator information required under section [11042](#)(a)(2) of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each such violation.
 - (3) Each day a violation described in paragraph (1) or (2) continues shall, for purposes of this subsection, constitute a separate violation.
 - (4) The Administrator may assess any civil penalty for which a person is liable under this subsection by administrative order or may bring an action to assess and collect the penalty in the United States district court for the district in which the person from whom the penalty is sought resides or in which such person's principal place of business is located.
- (d) Civil, administrative, and criminal penalties with respect to trade secrets
 - (1) Civil and administrative penalty for frivolous claims
If the Administrator determines -
 - (A)
 - (i) under section [11042](#)(d)(4) of this title that an explanation submitted by a trade secret claimant presents insufficient assertions to support a finding that a specific chemical identity is a trade secret, or (ii) after receiving supplemental supporting detailed information under section 11042(d)(3)(A) of this title, that the specific chemical identity is not a trade secret; and
 - (B) that the trade secret claim is frivolous,
 the trade secret claimant is liable for a penalty of \$25,000 per claim. The Administrator may assess the penalty by administrative order or may bring an action in the appropriate district court of the United States to assess and collect the penalty.
- (2) Criminal penalty for disclosure of trade secret information
Any person who knowingly and willfully divulges or discloses any information entitled to protection under section 11042 of this title shall, upon conviction, be subject to a fine of not more than \$20,000 or to imprisonment not to exceed one year, or both.
- (e) Special enforcement provisions for section [11043](#)
Whenever any facility owner or operator required to provide information under section [11043](#) of this title to a health professional who has requested such information fails or refuses to provide such information in accordance with such section, such health professional may bring an action in the appropriate United States district court to require such facility owner or operator to provide the information. Such court shall have jurisdiction to issue such orders and take such other action as may be necessary to enforce the requirements of section [11043](#) of this title.
- (f) Procedures for administrative penalties
 - (1) Any person against whom a civil penalty is assessed under this section may obtain review thereof in the appropriate district court of the United States by filing a notice of appeal in such court within 30

days after the date of such order and by simultaneously sending a copy of such notice by certified mail to the Administrator. The Administrator shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed. If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order or after the appropriate court has entered final judgment in favor of the United States, the Administrator may request the Attorney General of the United States to institute a civil action in an appropriate district court of the United States to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. In hearing such action, the court shall have authority to review the violation and the assessment of the civil penalty on the record.

- (2) The Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, or documents in connection with hearings under this section. In case of contumacy or refusal to obey a subpoena issued pursuant to this paragraph and served upon any person, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the administrative law judge or to appear and produce documents before the administrative law judge, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Footnotes

[\[1\]](#) So in original. Probably should not be capitalized.

Sec. 11046. Civil actions

- (a) Authority to bring civil actions
 - (1) Citizen suits

Except as provided in subsection (e) of this section, any person may commence a civil action on his own behalf against the following:

 - (A) An owner or operator of a facility for failure to do any of the following:
 - (i) Submit a follow-up emergency notice under section 11004(c) of this title.
 - (ii) Submit a material safety data sheet or a list under section [11021\(a\)](#) of this title.
 - (iii) Complete and submit an inventory form under section 11022(a) of this title containing tier I information as described in section [11022\(d\)\(1\)](#) of this title unless such requirement does not apply by reason of the second sentence of section [11022\(a\)\(2\)](#) of this title.
 - (iv) Complete and submit a toxic chemical release form under section [11023\(a\)](#) of this title.
 - (B) The Administrator for failure to do any of the following:
 - (i) Publish inventory forms under section [11022\(g\)](#) of this title.
 - (ii) Respond to a petition to add or delete a chemical under section [11023\(e\)\(1\)](#) of this title within 180 days after receipt of the petition.
 - (iii) Publish a toxic chemical release form under 11023(g) [\[1\]](#) of this title.

- (iv) Establish a computer database in accordance with section [11023\(j\)](#) of this title.
 - (v) Promulgate trade secret regulations under section 11042(c) of this title.
 - (vi) Render a decision in response to a petition under section [11042\(d\)](#) of this title within 9 months after receipt of the petition.
 - (C) The Administrator, a State Governor, or a State emergency response commission, for failure to provide a mechanism for public availability of information in accordance with section 11044(a) of this title.
 - (D) A State Governor or a State emergency response commission for failure to respond to a request for tier II information under section [11022\(e\)\(3\)](#) of this title within 120 days after the date of receipt of the request.
- (2) State or local suits
 - (A) Any State or local government may commence a civil action against an owner or operator of a facility for failure to do any of the following:
 - (i) Provide notification to the emergency response commission in the State under section [11002\(c\)](#) of this title.
 - (ii) Submit a material safety data sheet or a list under section [11021\(a\)](#) of this title.
 - (iii) Make available information requested under section 11021(c) of this title.
 - (iv) Complete and submit an inventory form under section 11022(a) of this title containing tier I information unless such requirement does not apply by reason of the second sentence of section [11022\(a\)\(2\)](#) of this title.
 - (B) Any State emergency response commission or local emergency planning committee may commence a civil action against an owner or operator of a facility for failure to provide information under section [11003\(d\)](#) of this title or for failure to submit tier II information under section [11022\(e\)\(1\)](#) of this title.
 - (C) Any State may commence a civil action against the Administrator for failure to provide information to the State under section [11042\(g\)](#) of this title.
- (b) Venue
 - (1) Any action under subsection (a) of this section against an owner or operator of a facility shall be brought in the district court for the district in which the alleged violation occurred.
 - (2) Any action under subsection (a) of this section against the Administrator may be brought in the United States District Court for the District of Columbia.
- (c) Relief

The district court shall have jurisdiction in actions brought under subsection (a) of this section against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided

for violation of that requirement. The district court shall have jurisdiction in actions brought under subsection (a) of this section against the Administrator to order the Administrator to perform the act or duty concerned.

- (d) Notice
 - (1) No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.
 - (2) No action may be commenced under subsection (a)(1)(B) or
- (a)
 - (1)
 - (C) of this section prior to 60 days after the date on which the plaintiff gives notice to the Administrator, State Governor, or State emergency response commission (as the case may be) that the plaintiff will commence the action. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation.
- (e) Limitation

No action may be commenced under subsection (a) of this section against an owner or operator of a facility if the Administrator has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty under this Act with respect to the violation of the requirement.
- (f) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or the substantially prevailing party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.
- (g) Other rights

Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any Federal or State statute or common law to seek enforcement of any requirement or to seek any other relief (including relief against the Administrator or a State agency).
- (h) Intervention
 - (1) By the United States

In any action under this section the United States or the State, or both, if not a party, may intervene as a matter of right.
 - (2) By persons

In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the Administrator or the State shows that the person's interest is adequately represented by existing parties in the action.

Footnotes

[\[1\]](#) So in original. Probably should be preceded by "section".

Sec. 11047. Exemption

Except as provided in section [11004](#) of this title, this chapter does not apply to the transportation, including the storage

incident to such transportation, of any substance or chemical subject to the requirements of this chapter, including the transportation and distribution of natural gas.

Sec. 11048. Regulations

The Administrator may prescribe such regulations as may be necessary to carry out this chapter.

Sec. 11049. Definitions

For purposes of this chapter -

- (1) Administrator
The term "Administrator" means the Administrator of the Environmental Protection Agency.
- (2) Environment
The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.
- (3) Extremely hazardous substance
The term "extremely hazardous substance" means a substance on the list described in section [11002](#)(a)(2) of this title.
- (4) Facility
The term "facility" means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with, such person). For purposes of section [11004](#) of this title, the term includes motor vehicles, rolling stock, and aircraft.
- (5) Hazardous chemical
The term "hazardous chemical" has the meaning given such term by section [11021](#)(e) of this title.
- (6) Material safety data sheet
The term "material safety data sheet" means the sheet required to be developed under section [1910.1200](#)(g) of title 29 of the Code of Federal Regulations, as that section may be amended from time to time.
- (7) Person
The term "person" means any individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body.
- (8) Release
The term "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles) of any hazardous chemical, extremely hazardous substance, or toxic chemical.
- (9) State
The term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern

Mariana Islands, and any other territory or possession over which the United States has jurisdiction.

- (10) Toxic chemical
The term "toxic chemical" means a substance on the list described in section [11023](#)(c) of this title.

Sec. 11050. Authorization of appropriations

There are authorized to be appropriated for fiscal years beginning after September 30, 1986, such sums as may be necessary to carry out this chapter.

**TITLE 39
HEALTH AND SAFETY
CHAPTER 71
HAZARDOUS SUBSTANCE EMERGENCY RESPONSE ACT**

39-7101. SHORT TITLE.

This chapter may be known and cited as the "Idaho Hazardous Substance Response Act.

39-7102. LEGISLATIVE FINDINGS AND PURPOSES.

- (1) The legislature of the state of Idaho finds:
 - (a) That the state has a duty to protect the health, safety and welfare of the people of Idaho;
 - (b) That the protection and preservation of Idaho's environment promotes the health, safety and welfare of her people;
 - (c) That the unexpected and uncontrolled releases of hazardous substances constitute a threat to the people and environment of Idaho; and
 - (d) That knowledgeable persons, governmental entities and organizations should be encouraged to lend expert assistance in the event of a hazardous substance incident.
- (2) Therefore, it is hereby declared that the purposes of the provisions of this chapter are:
 - (a) To facilitate emergency response planning and coordination at a state and local level;
 - (b) To provide for the prompt response and containment of releases of hazardous substances; (c) To provide liability for emergency response costs associated with hazardous substances incidents;
 - (d) To encourage knowledgeable persons, governmental entities and organizations to lend assistance by providing them with limited immunity from civil liability; and
 - (e) To provide a mechanism for recovery of costs incurred by the state and local governments in responding to emergency hazardous substance incidents to be used in lieu of, and not in addition to, cost recovery mechanisms or claims for relief provided by applicable federal laws. By enacting this chapter, it is the intent of the legislature that the state and local governments elect to proceed in state courts under the provisions of this chapter and other provisions of state law rather than in federal court under federal laws, where necessary to recover emergency response costs. There is no provision for cost recovery for a hazardous substance incident response occurring on private property where the owner responds to the incident with the approval of the incident commander.

39-7103. DEFINITIONS. As used in this chapter

- (1) "Military division" means the military division of the office of the governor.
- (2) "Emergency" means an abrupt release which in the reasonable judgment of the local emergency response authority, threatens immediate and irreparable harm to the environment or the health and safety of any individual and which requires immediate action for the containment or control of a hazardous substance.
- (3) "Hazardous substance incident" means an emergency circumstance requiring a response by the state emergency response team or the local emergency response authority to a release of a hazardous substance. A hazardous substance incident may require containment or confinement or both, but does not include site cleanup or remediation efforts after the incident commander has determined the emergency has ended.
- (4) "Hazardous substance" means
 - (a) Any "hazardous substance" within the scope of section 101(14) of the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 U.S.C. 9601(14);
 - (b) Any hazardous material within the scope of section 104 of the federal hazardous materials transportation act, 49 U.S.C. 1803, and the federal department of transportation regulations promulgated pursuant thereto; and

(c) Any extremely hazardous substance within the scope of section 302 of the federal emergency planning and community right-to-know act, 42 U.S.C. 11002.

(5) "Incident commander" is the person in charge of all responders to a hazardous substance incident and who is identified in the Idaho hazardous materials emergency incident command and response plan or the private emergency response plan.

(6) "Local emergency response authority" means those persons designated under section 39-7105, Idaho Code, by the city, county, or the military division to be first responders to hazardous substance incidents.

(7) "Person" means any individual, public or private corporation, partnership, joint venture, association, firm, trust, estate, the United States or any department, institution, or agency thereof, the state or any department, institution, or agency thereof, any municipal corporation, county, city, or other political subdivision of the state, or any other legal entity whatsoever which is recognized by law as the subject of rights and duties.

(8) "Private emergency response plan" means a plan designed to respond to emergency releases of hazardous substances at a specific facility or under a specific set of conditions.

(9) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, dumping or disposing of a hazardous substance into the environment. "Release" does not include any discharge of a hazardous substance into the environment which is authorized by limits and conditions in a federal or state permit relating to the protection of public health or the environment so long as the permitted activity from which the release occurs is in compliance with applicable limits and conditions of the permit.

(10) "State emergency response team" means one (1) of the state emergency response teams authorized by the military division to respond to hazardous substance incidents.

39-7104. MILITARY DIVISION -- POWERS AND DUTIES.

(1) The military division shall implement the provisions of this chapter and direct the activities of its staff and, in so doing, the military division may

(a) Create a bureau of hazardous materials and, in accordance with the laws of the state, hire, fix the compensation, and prescribe the powers and duties of such other individuals, including consultants, emergency teams and committees, as may be necessary to carry out the provisions of this chapter.

(b) Create and implement state emergency response teams that have appropriately trained personnel and necessary equipment to respond to hazardous substance incidents. The military division shall enter into a written agreement with each entity or person providing equipment or services to a designated emergency response team. The teams shall be available and may respond to hazardous substance incidents at the direction of the military division or its designee or local incident commander.

(c) Contract with persons to meet state emergency response needs for the teams and response authorities.

(d) Advise, consult and cooperate with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments and other persons concerned with emergency response and matters relating to and arising out of hazardous substance incidents.

(e) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations for and with state emergency response teams, local emergency response authorities and other interested persons.

(f) Collect and disseminate information relating to emergency response to hazardous substance incidents.

(g) Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, made to the state for emergency response activities provided for in this chapter.

(h) Submit an annual report prior to February 1 to the governor and to the legislature concerning emergency response to hazardous substance incidents.

(i) Prepare, coordinate, implement and update a statewide hazardous materials incident command and response plan that coordinates state and local emergency response authorities to respond to hazardous substance incidents within the state for approval by the legislature. The plan

shall address radiation incidents. The Idaho hazardous materials incident command and response plan shall be consistent with and a part of the Idaho state disaster plan provided in section 46-1006, Idaho Code, after legislative approval.

(2) The military division shall have the powers and duties of a state emergency response commission under the federal emergency planning and community right-to-know act, 42 U.S.C. section 11001 et seq.

(3) The military division may promulgate rules and procedures to govern reimbursement of claims pursuant to this chapter.

(4) All state agencies and institutions will cooperate and provide staff assistance to the military division in carrying out its duties under this chapter.

39-7105. LOCAL EMERGENCY RESPONSE AUTHORITIES -- DESIGNATION.

(1) It is the purpose of the provisions of this section to provide for the designation of local emergency response authorities for hazardous substance incidents.

(2) Cities and counties shall designate the local emergency response authorities for hazardous substance incidents that occur within their respective jurisdictions. Cities and counties are encouraged to appoint a response authority whose members will become trained in hazardous substance incident response.

(a) The governing body of every city shall designate by ordinance or resolution a local emergency response authority for hazardous substance incidents occurring within the corporate limits of such city. A city may designate the county as its emergency response authority and participate in the county plan for hazardous substance incident response, and shall notify the county of that designation in writing.

(b) The board of county commissioners of every county in the state shall designate by ordinance or resolution a local emergency response authority for hazardous substance incidents occurring within the unincorporated area of such county.

(c) The governing body of every city and every board of county commissioners shall notify the military division and Idaho emergency medical services communications center of its designated local emergency response authority. Such notification shall be in writing and shall occur as soon as practicable, and, in any event, no later than sixty (60) calendar days after this chapter becomes effective. Thereafter, any changes in such designations shall be communicated to the military division and Idaho emergency medical services communications center no later than ten (10) working days before such change becomes effective.

(d) If no local emergency response authority having the ability to respond to a hazardous substance incident exists within a city or county or if such a political subdivision is unable to obtain the services of an emergency response authority by way of a mutual aid agreement, contract or otherwise, such city or county may petition the military division to designate an emergency response authority to respond to hazardous substance incidents within the petitioning political subdivision's jurisdiction. The military division, in consultation with such political subdivision, may thereafter designate appropriate local emergency response authorities.

(3) If a hazardous substance incident occurs in an area in which no local emergency response authority has been designated, or if the Idaho state police has been designated as the local emergency response authority, the Idaho state police shall be the local emergency response authority for such hazardous substance incident for the purposes of this section.

39-7106. LOCAL EMERGENCY RESPONSE AUTHORITIES -- POWERS AND DUTIES.

(1) Every local emergency response authority designated in or pursuant to this chapter will respond to a hazardous substance incident occurring within its jurisdiction in a fashion consistent with the Idaho hazardous materials emergency incident command and response plan except as provided in a private emergency response plan. The local emergency response authority will also respond to a hazardous substance incident which initially occurs within its jurisdiction but which spreads to another jurisdiction. If a hazardous substance incident occurs on a boundary between two (2) jurisdictions or in an area where the jurisdiction is not readily ascertainable, the first local emergency response authority to arrive at the scene of the incident will perform the initial emergency response.

(2) The incident commander shall declare the hazardous substance incident ended when the threat to public health and safety has ended and the threat to the environment has been minimized.

(3) Mutual aid agreements or contracts are encouraged among governmental entities, private parties, local emergency response authorities and the military division in order to safely respond to hazardous substance incidents. Further, mutual aid agreements are encouraged among governmental entities, local emergency response authorities and the military division with other similar entities in other states and Canada in order to ensure appropriate response to hazardous substance incidents.

(4) Any local emergency response authority designated in or pursuant to the provisions of section 39-7105, Idaho Code, may request the military division to provide assistance consistent with the Idaho hazardous materials emergency incident command and response plan.

39-7107. STATE DISASTER PREPAREDNESS ACT CONTROLS DISASTER EMERGENCIES, EXCEPT FOR THE LIABILITY OF RESPONSIBLE PERSONS.

In the event a disaster emergency or local disaster emergency is declared by proper authority as defined and set forth in chapter 10, title 46, Idaho Code, as a result of a hazardous substance incident, the provisions of chapter 10, title 46, Idaho Code, shall govern, except that the provisions of section 39-7109, Idaho

Code, shall govern reimbursement of emergency response costs and the provisions of sections 39-7111 and 39-7112, Idaho Code, shall govern the liability of and cost recovery against persons responsible for hazardous substance incidents resulting in disaster emergencies in any case.

39-7108. NOTIFICATION OF RELEASE IS REQUIRED.

(1) Any person who has responsibility for reporting a release under the federal comprehensive environmental response, compensation and liability act (CERCLA), 42 U.S.C. 9603, shall, as soon as practicable after he has knowledge of any such reportable release other than a permitted release or as exempted in section 39-7108(3), Idaho Code, notify the military division of such release.

(2) Any person who has responsibility for reporting a release under the federal emergency planning and community right-to-know act, 42 U.S.C. 11001 et seq., shall as soon as practicable after he has knowledge of any such reportable release other than a permitted release notify the military division of such release.

(3) Any facility having a release reportable under section 39-7108(1), Idaho Code, shall not be required to report the release to the military division if the following circumstances are met

(a) Such release is not reportable under subsection (2) of section 39-7108, Idaho Code.

(b) The facility has an approved private emergency response plan that details how such spills shall be responded to and reported. This provision does not relieve the facility from any reporting required under other federal statutory, regulatory or other permit authorities.

(4) The military division shall immediately notify the division of environmental quality within the department of health and welfare of any release reported to the military division. Such reporting to the military division shall fulfill all state reporting requirements for the division of environmental quality.

(5) Any person who does not notify the military division in accordance with the provisions of section 39-7108, Idaho Code, shall be liable for a civil penalty of a sum not to exceed one thousand dollars (\$1,000) for each day the violation continues to a maximum of twenty-five thousand dollars (\$25,000).

(6) No penalty pursuant to this section shall occur if an incident occurs on private property and results in no offsite environmental damage.

39-7109. RIGHT TO CLAIM REIMBURSEMENT.

(1) State emergency response teams and local emergency response authorities may submit claims to the military division for reimbursement of the following documented costs incurred as a result of their response to and containment of a hazardous substance incident

- (a) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response;
 - (b) Compensation of employees for the time and efforts devoted specifically to the response that are not otherwise provided for in the applicant's operating budget, (e.g., overtime pay for permanent full-time and other than full-time employees, recalled personnel or responding when out of jurisdiction);
 - (c) Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment);
 - (d) Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred as a result of the response (e.g., self-contained breathing apparatus irretrievably contaminated during the response);
 - (e) Decontamination of equipment contaminated during the response;
 - (f) Special technical services specifically required for the response (e.g., costs associated with the time and efforts of technical experts/specialists not otherwise provided for by the local government);
 - (g) Medical monitoring or treatment of response personnel;
 - (h) Laboratory costs for purposes of analyzing samples taken during the response; and
 - (i) Disposal costs. Such costs may be reimbursed as provided in this chapter. Reimbursement for the costs identified in paragraphs (a) through (c) of this subsection will not exceed the duration of the response.
- (2) A private person, who is not a part of the state emergency response team or a local emergency response authority and is not liable under section 39-7111, Idaho Code, may submit a claim to the military division for costs identified in section 39-7109, Idaho Code, if their response was requested by the incident commander.
- (3) Claims for reimbursement shall be submitted to the military division within sixty (60) days after termination of the hazardous substance incident for the state's determination of payment, if any.
- (4) Reimbursements shall only be paid after the military division finds that the actions by the state emergency response team or the local emergency response authority were taken in response to a hazardous substance incident as defined in this chapter.
- (5) The state of Idaho shall be subrogated to the rights of any such person so reimbursed to the extent of such reimbursement.

39-7110. DEFICIENCY WARRANTS FOR REIMBURSEMENT OF RESPONSE COSTS.

- (1) The military division shall review all claims for reimbursement and make recommendations as to payment or nonpayment of the claims to the board of examiners within one hundred twenty (120) days after termination of the hazardous substance incident. The board of examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing reasonable and documented costs associated with emergency response actions taken pursuant to this chapter. The costs associated with routine firefighting procedures shall not be reimbursable costs under this chapter.
- (2) Deficiency warrants authorized by the board of examiners shall not exceed the sum of one hundred thousand dollars (\$100,000) for reimbursement of all claims made as a result of a single hazardous substance incident. In the event all claims for reimbursement for a single hazardous substance incident exceeds the sum of one hundred thousand dollars (\$100,000), the board of examiners shall determine an appropriate and equitable basis of payment of reimbursements.
- (3) Upon authorization of deficiency warrants by the board of examiners in accordance with the provisions of this section, the state controller shall, after notice to the state treasurer, draw deficiency warrants in the authorized amounts against the general account.
- (4) Nothing contained in this section shall be construed to change or impair any right of recovery or subrogation arising under any other provisions of law.

39-7111. LIABILITY FOR RELEASE OF A HAZARDOUS SUBSTANCE.

- (1) Any person who owns, controls, transports, or causes the release of a hazardous substance which is involved in a hazardous substance incident shall be strictly liable for the costs arising out of a hazardous substance incident, identified in section 39-7112, Idaho Code. There shall be no liability

under this chapter for a person otherwise liable who can establish by a preponderance of the evidence that:

- (a) The hazardous substance incident was caused solely by:
 - (i) An act of God;
 - (ii) An act of war;
 - (iii) An act or omission of a third party, other than an employee or agent of the potentially liable person if:
 - 1. The potentially liable person exercised reasonable care with respect to the hazardous substance involved taking into consideration the characteristics of the hazardous substance in light of all relevant facts and circumstances; and
 - 2. The potentially liable person took precautions against foreseeable acts or omissions of any such third party and the consequences that could foresee ably result from such acts or omissions; or
 - (iv) Application of a pesticide product or fertilizer registered under the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. section 136, et seq., according to label requirements.

39-7112. COST RECOVERY AND CIVIL REMEDIES.

- (1) The military division shall be responsible for recovering those costs incurred by the state arising out of a hazardous substance incident identified in section 39-7109, Idaho Code, and legal costs including attorney's fees, investigation costs and litigation costs.
- (2) In deciding whether to commence a cost recovery action, and against whom a cost recovery action will be filed, the military division in exercising its prosecutorial discretion will take into consideration the cause of the incident, the total amount of cost incurred in responding to the incident, the avoid ability of the incident and such other factors as the military division deems appropriate.
- (3) The remedy for the recovery of those emergency response costs identified in section 39-7109, Idaho Code, provided by this chapter shall be exclusive and shall not be used in conjunction with or in addition to any other remedy for recovery of such costs provided by applicable federal laws. Any person who receives compensation for the emergency response costs pursuant to any other federal or state law shall be precluded from recovering compensation for such costs pursuant to this chapter. Nothing in this chapter shall otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury or loss resulting from the release of any hazardous substance or for remedial action or the cost of remedial action for such release.
- (4) It shall be the duty of the attorney general to commence any civil action brought by the military division pursuant to this chapter. At the request of a political subdivision of the state or a local governmental entity who has responded to or contained a hazardous substance incident, the attorney general may commence a civil action on their behalf pursuant to this chapter.
- (5) Any person who renders assistance in response to a hazardous substance incident may file a civil action under the provisions of this chapter for recoverable costs which have not been reimbursed by the state.
- (6) Recoveries by the state for reimbursed costs shall be deposited in the general account fund to offset amounts paid as reimbursement.

39-7113. PERSONS RENDERING ASSISTANCE RELATING TO HAZARDOUS SUBSTANCE INCIDENTS -- GOOD SAMARITAN LIMITED IMMUNITY.

- (1) Consistent with the provisions of subsections (2) and (3) of this section:
 - (a) The state shall be liable for the acts or omissions of the state emergency response teams responding to a hazardous substance incident.
 - (b) The designating or requesting city or county shall be liable for the acts or omissions of a local emergency response authority responding to a hazardous substance incident within its jurisdiction.
- (2) Notwithstanding any provision of law to the contrary, any state emergency response team, local emergency response authority or other person who responds to a hazardous substance incident at

the request of an incident commander shall not be subject to civil liability for assistance or advice, except as provided in subsection (3) of this section.

(3) The exemption from civil liability provided in this section shall not apply to:

(a) An act or omission that caused in whole or in part such hazardous substance incident or a person who may otherwise be liable therefor; or

(b) Any person who has acted in a grossly negligent, reckless, or intentional manner.

(4) Nothing in this section shall be construed to abrogate or limit the immunity granted to governmental entities pursuant to chapter 9, title 6, Idaho Code.

39-7114. PRIVATE EMERGENCY RESPONSE PLAN APPROVAL.

Private emergency response plans may be prepared for any facility or specific set of conditions. A private emergency response plan must be approved by the local emergency response authority or the military division unless the plan

(1) Is a contingency plan that has been approved in the issuance of a final part B operating permit, in accordance with section 39-4401, Idaho Code, by the Idaho division of environmental quality;

(2) Is a contingency plan prepared in accordance with the requirements of rules promulgated pursuant to section 39-4401, Idaho Code, by the Idaho division of environmental quality;

(3) Has otherwise been approved by the (the) military division or division of environmental quality.

Private emergency response plans must be submitted, for file purposes, to the local emergency response authorities and the military division to qualify as a private emergency response plan under this section.

39-7115. SEVERABILITY.

The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE

Your Letterhead

MM/DD/YY

William H. Bishop
Idaho Bureau of Hazardous Materials
4040 Guard Street, Bldg. 600
Boise, ID 83705

Dear Mr. Bishop:

In compliance with the Emergency Planning and Community Right to Know Act (EPCRA), it is the responsibility of the Board of County Commissioners of each county to submit names in nomination for Local Emergency Planning Committee membership to the Idaho Bureau of Hazardous Materials.

We have acquired for your review, consideration and for submittal to the Bureau of Hazardous Materials, the following nominees who have shown an interest in assisting _____ County in meeting obligations and requirements for the continuing development of a Local Emergency Planning Committee. These appointments would be for an indefinite term.

Nominees:

Name or Title (Address, Phone)	Department	Position (Chairman, Vice-Chairman, Secretary, Treasurer, Member etc.)
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Sincerely,

BOARD OF COUNTY COMMISSIONERS
(Signatures)

SAMPLESAMPLESAMPLESAMPLESAMPLESAMPLE

By-Laws
 _____ **County**
Local Emergency Planning Committee (LEPC)

ARTICLE I
Members

As a minimum, the LEPC shall consist of representatives from each of the following groups or organizations: elected officials; law enforcement; emergency management; fire response; emergency medical services; environmental; hospital; transportation; media; community groups; owners and operators of facilities subject to reporting under the Emergency Planning and Community Right-to-know Act (EPCRA); and the general public.

ARTICLE II
Officers

Officers of the LEPC shall be the Chairman, Vice-Chairman, Secretary and Treasurer. The Chairman, Vice-Chairman and Treasurer shall be elected by the members of the LEPC and shall hold office for two years. Elections will be held in the month of September and new officers will take office on October 1 of the year elected. The Chairman and Treasurer shall be elected in odd numbered years and the Vice-Chairman shall be elected in even numbered years. In the event of the Vice-Chairman becoming Chairman, a special election will be held for the remainder of the Vice-Chairman's term of office.

ARTICLE III
Meetings

Meetings are open to the public and shall be held on a regularly scheduled basis. Notice of all meetings shall be published in the local media at least five days prior to the day of the meetings.

ARTICLE IV
Public Availability

The _____ County LEPC shall annually publish a notice in the (local Newspaper) _____ during the month of May, advising that the Hazardous Materials Response Plan Annex, Material Safety data Sheets (MSDS) or chemical inventory lists, and follow-up emergency notices are available for public review; consistent with Section 322 of the Emergency Planning and Community Right-to-Know Act (EPCRA). The public notice shall also state that follow-up emergency notices may be issued.

The public may review these documents at _____,
during normal office hours.

ARTICLE V
Public Request for Information

Any person may submit a written request for information under Sections 311,312,and 324 of EPCRA. Requests shall be addressed to the _____ County LEPC (Address). The LEPC shall respond to requests for information no later than 45 days from the receipt of request. The LEPC Chairman shall serve as the Coordinator of Information.

ARTICLE VI
Public Comment

Public comments concerning the Hazardous Materials Response Plan Annex, or LEPC activities in general are welcome. The Hazardous Materials Response Plan Annex will be open for discussion at every LEPC meeting. Comments or questions directed to the LEPC will be answered in writing within 14 working days, after appropriate coordination.

ARTICLE VII
Distribution of the Hazardous Materials Response Plan Annex

Routine distribution of the Response Plan will be in accordance with operational needs. Copies of the most recent published plan will be available for public review in the _____ during normal office hours.

ARTICLE VIII
Dissolution of LEPC

In the event that the _____ County LEPC is dissolved or becomes inactive as determined by the _____ County board of Commissioners; all equipment and LEPC responsibilities shall revert to the _____ County Board of Commissioners.

GUIDE FOR CONDUCTING EFFECTIVE MEETINGS

A GUIDE FOR LEPC'S

Meetings are not usually very high on anyone's like-to-list. Unfortunately, they seem to be an ever increasing part of our lives. This section of the LEPC Handbook will offer some suggestions on how to conduct more productive meetings. We hope these ideas prove helpful. Use what works for you, ignore what doesn't and add whatever improvements you find.

How to **PITCH** a Better Meeting

PITCH is the acronym for this five step process for conducting better meetings:

Plan

Inform

Target

Contain

Hasten

PLAN the meeting being clear about:

1. The purpose of the meeting
2. Agenda items.
3. The desired outcome.
4. What arrangements need to be made.
5. How long the meeting will last.

INFORM meeting participants of:

1. The purpose of the meeting
2. Agenda items.
3. The desired outcome.
4. Date, time and location
5. Any previous assignments.

TARGET productive discussion by:

1. Stating and clarifying the purpose of the meeting
2. Getting agreement on desired outcomes.
3. Allowing for modification of the agenda (including adding or deleting items, changing the order, or adjusting the times allocated).

CONTAIN the discussion to the agreed-upon agenda by:

1. Having someone in charge and someone to act as recorder.
2. Adhering to the agenda unless the group explicitly agrees to alter it.
3. Confronting behavior that diverts the group from attaining its desired outcomes.
4. Encouraging each LEPC member attending to participate fully.
5. Getting agreement on action steps, responsibilities and target dates.

HASTEN the completion of agreed-upon desired outcomes by:

1. Summarize the meeting.
2. Recording the decisions that were made.
3. Recording the names of persons responsible for implementing action steps and the target dates.
4. Agreeing on a date for the next meeting.
5. Evaluating every meeting and agreeing on ways to improve.
6. Editing and distributing minutes.
7. Putting unfinished business on the agenda for the next meeting.
8. Following up and encouraging task completion.
9. Monitoring and evaluating the results achieved by the group.

Role of the Chairman or Meeting Facilitator

1. Summarize the last meeting.
2. Appoint a recorder.
3. Remind members of any commitments or agreements they make for this meeting.
4. Review and clarify the agenda if necessary.
5. Prioritize tasks if the agenda hasn't already done so.
6. Establish specific outcomes desired for this meeting.
7. Establish time frames for each task.
8. Keep the meeting moving.

Keeping a Meeting Going

The chairman or meeting leader should:

1. Keep the members on task.
2. Check for agreement or disagreement.
3. Track progress on the agenda.
4. Provide ongoing feedback to the group-summarize, paraphrase, restate frequently.
5. Protect against domination by a few individuals.
6. Call on silent members to participate.
7. Protect individuals from personal attack.
8. Suggest alternatives or options.
9. Bring conflicts to the surface.
10. Call for breaks.



How the Idaho Hazardous Materials Incident Command and Response Support Plan Works

- ✓ **Local jurisdiction determines if it is a Hazardous Materials Incident (chemical, radiological or biological).**
- ✓ **Incident Commander notifies local dispatch who in turn notifies State Communications at 1-800-632-8000 or 208-846-7610. (Incident Commander or representative may notify State Communications directly)**
- ✓ **State Communications notifies Communications Moderator: Department of Environmental Quality (DEQ) for chemical, Bureau of Hazardous Materials (BHM) for radiological.**
- ✓ **Communications Moderator sets a time for conference call. Typically within ten (10) minutes of initial notification.**
- ✓ **Initial conference (classification) call will include: Communications Moderator (DEQ/BHM), Incident Commander (or other local representative), Regional Response Team member, and INEEL Oversight Program if radiological.**
- ✓ **Call will determine type and scope of incident, assistance needed, and classification by consensus of all parties on call.**
- ✓ **If other assistance, or advice requested or required, second conference call time may be set with additional parties.**
- ✓ **State Communications performs incident notifications depending on classification.**

SEE IDAHO HAZARDOUS MATERIALS INCIDENT COMMAND & RESPONSE SUPPORT PLAN FOR EXPLANATION OF CLASSIFICATIONS, NOTIFICATIONS, AND AVAILABLE ASSISTANCE.

**IDAHO BUREAU OF HAZARDOUS MATERIALS
EMERGENCY RESPONSE INCIDENT REPORT****STATE COMM NUMBER:** _____

AGENCY SUBMITTING CLAIM _____ INCIDENT DATE: _____

COMPLETED BY _____ PHONE # _____

INCIDENT LOCATION _____ CITY: _____ ZIP: _____ COUNTY: _____

GPS: _____

TIME INCIDENT STARTED: _____ ENDED _____ TIME RESPONSE BEGAN: _____ ENDED _____

INCIDENT COMMANDER _____

RESPONSE TEAM LEADER _____

RESPONDING _____

SOURCE/CAUSE OF RESPONSE _____

PARTY _____ KNOWN _____ UNKNOWN _____

PRIMARY RESPONSIBLE PARTY/SUSPECT NAME: _____

CONTACT NAME _____ TITLE _____

MAILING ADDRESS _____ CITY _____ STATE _____ ZIP _____

TELEPHONE _____ MESSAGE PHONE _____

INSURANCE COMPANY _____ AGENT _____

ADDRESS _____ CITY _____ STATE _____ ZIP _____

TELEPHONE _____ MESSAGE PHONE _____

SPILL INFORMATION _____

CHEMICALS INVOLVED _____

SUMMARY OF RESPONSE ACTION _____

ADDITIONAL INFORMATION _____

DOCUMENTATION ATTACHED: _____ PHOTOS _____ VIDEO _____ RECEIPTS
_____ NARRATIVE/TIMELINE

rec\packet.doc

BUREAU OF HAZARDOUS MATERIALS
COST RECOVERY PROGRAM
 4040 Guard St., Bldg. 600
 Boise, ID 83705-5004

PERSONNEL COSTS - Idaho Code Section 39-7109(b)

DIRECTIONS: Please complete this form for reimbursement of personnel cost for each employee that was recalled, paid on call, or who worked overtime as a result of the hazmat incident. Record their hourly pay including your department's benefits rate, whether they worked OT, recalled, or were paid on call, total response hours, a brief description of their on-scene duties and indicate their appropriate training level(s).

DEPARTMENT NAME:

TRAINING LEVEL:

Name	Duty Status (OT, Recall, Paid on Call)	Hourly Rate Plus Benefits	Total Hours	Total Amount	On-Scene Duties	Awareness Operations Technician Incident Command
TOTALS:						

EMPLOYER CERTIFICATION: I hereby certify that all personnel cost listed herein are for overtime and/or recalled personnel only. I further certify that all information contained on this form is true and correct to the best of my knowledge.

Signature

Date

Title

BUREAU OF HAZARDOUS MATERIALS
 COST RECOVERY PROGRAM
 4040 Guard St., Bldg. 600
 Boise, ID 83705-5004

MEDICAL TREATMENT - Idaho Code Section 39-7109(g)

DIRECTIONS: Please complete this section for reimbursement of medical treatment costs for response personnel. Receipts for services provided must be attached.

DEPARTMENT NAME:

Name	Description of Medical Treatment	Total Cost
TOTALS=		

VEHICLES AND APPARATUS - Idaho Code Section 39-7109(c) and (d)

DIRECTIONS: Please complete this section for reimbursement of vehicles and apparatus used specifically for the response. Indicate if the amount claimed is for rental, leasing or replacement. Receipts must be attached.

DEPARTMENT NAME:

Item	Rent Lease or Replace	Qty	Total Hours	Unit Cost or Hourly Rate	Total Cost
TOTALS=					

BUREAU OF HAZARDOUS MATERIALS
 COST RECOVERY PROGRAM
 4040 Guard St., Bldg. 600
 Boise, ID 83705-5004

MATERIALS/SUPPLIES/DECON - Idaho Code Section 39-7109 (a),(e) and (i)

DIRECTIONS: Please complete this section for reimbursement of materials, supplies and decon of equipment costs incurred as a result of the incident. Receipts for these costs must be attached.

DEPARTMENT NAME:

Item	Qty	Unit Cost	Total Cost
TOTALS=			

MISCELLANEOUS/TECHNICAL SERVICES/LAB COSTS - Idaho Code Section 39-7109 (b),(f) and (h)

DIRECTIONS: Please complete this section for reimbursement of miscellaneous costs, technical services and lab costs utilized specifically for the response. Receipts must be attached.

DEPARTMENT NAME:

Item or Technical Advisor	Qty	Unit Cost or Hourly Rate	Total Cost
TOTALS=			

SAMPLE SUMMARY LETTER FOR MULTIPLE AGENCY RESPONSE

(Your Department Letterhead)

(DATE)

Idaho Bureau of Hazardous Materials
4040 Guard St., Bldg. 600
Boise, ID 83705-5004

Re: Invoice for HM Response
Date of incident:

STATECOMM #:

Please consider this letter an invoice for reimbursement in response to the above referenced hazardous materials incident.

The following agencies incurred costs relating to the incident are as follows:

1.	Rupert Fire	\$1,610.00
2.	Pocatello Fire	800.00
3.	Burley Fire	125.00
4.	Jerome Fire	120.00
5.	Twin Falls Fire	220.00
6.	ISP	<u>240 .00</u>
Total		\$3115.00

Itemized reports from each agency listed are enclosed with this letter.

* I hereby certify that all the costs submitted were incurred as a result of response to this incident and that we have not nor will receive payment for these costs from any other source. I certify that the personnel costs are for overtime pay and recalled personnel. These costs would not have been incurred had the incident not occurred.

Sincerely,

(person submitting cost)

*Please make sure this paragraph is included in your cover letter. Thanks.

SAMPLE SUMMARY LETTER

(Your Department Letterhead)

(DATE)

Idaho Bureau of Hazardous Materials
4040 Guard St., Bldg. 600
Boise, ID 83705-5004

Re: Invoice for HM Response
Date of incident:

STATECOMM #:

Please consider this letter an invoice for reimbursement in response to the above referenced hazardous materials incident.

The costs relating to the incident are as follows:

1.	Personnel Overtime Costs	\$1,610.00
2.	Medical Monitoring/Treatment	300.00
3.	Vehicles and Apparatus	80.00
4.	Disposal Material/Supplies	120.00
5.	Decon/Disposal	10.00
6.	Miscellaneous/Technical/Lab Costs	<u>.00</u>
	Total	\$2,120.00

* I hereby certify that all the costs submitted were incurred as a result of response to this incident and that we have not nor will receive payment for these costs from any other source. I certify that the personnel costs are for overtime pay and recalled personnel. These costs would not have been incurred had the incident not occurred.

Sincerely,

(person submitting cost)

*Please make sure this paragraph is included in your cover letter. Thanks.

LOCAL EMERGENCY PLANNING COMMITTEE CHECKLIST

BEFORE THE FIRST MEETING

- ☐ **Set date, time and neutral place for meeting.**
- ☐ **Set agenda.**
- ☐ **Provide public notice of meeting.**
- ☐ **Invite participants with copy of draft agenda attached.**
- ☐ **Define scope, goals and objectives of LEPC.**

ONGOING TASKS

- ☐ **Appoint a chairperson, vice-chairperson and secretary/treasurer.**
- ☐ **Record minutes of meetings. Submit copies to participants and the BHM.**
- ☐ **Submit a nomination letter of members of LEPC to Bureau of Hazardous Materials.**
- ☐ **Adopt by-laws and provide a copy to BHM.**
- ☐ **Appoint an Information Coordinator for public information requests**
- ☐ **Appoint Sub-Committees.**
- ☐ **Maintain records and references.**
- ☐ **Publish an annual notice in local newspapers that the emergency operations plan, MSDS, follow-up release notifications, and inventory forms have been submitted.**

PROJECT IDEAS

- ☐ **Develop a Hazard Analysis for your jurisdiction.**
- ☐ **Develop an Emergency Operations Plan (EOP) to be reviewed and updated annually.**
- ☐ **Develop an exercise program.**
- ☐ **Develop a training needs analysis.**
- ☐ **Develop a list of resources.**